108—578

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~505.~~ 219

THE WESTERN PACIFIC RAILROAD COMPANY AND CHARLES McLAUGHLIN, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED MAY 1, 1886.

SUPREME COURT OF THE UNITED STATES.

No. 505.

THE WESTERN PACIFIC RAILROAD COMPANY AND CHARLES McLAUGHLIN, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

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a THE UNITED STATES OF AMERICA, *ss:*

To the United States of America, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, District of Columbia, on the 13th day of October, A. D. 1879, pursuant to an order granting an appeal by the circuit court of the United States of the ninth judicial circuit, in and for the district of California, and entered upon the minutes of said circuit court on the second day of June, A. D. 1879, wherein the Western Pacific Railroad Company and Charles McLaughlin are appellants, and the United States of
b America is appellee, to show cause, if any there be, why the final decree in the said order mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 19th day of June, A. D. 1879, and of the Independence of the United States the 103d.

[SEAL.] LORENZO SAWYER,
U. S. Circuit Judge, Ninth Circuit.

c (Indorsed:) No. 1733. Circuit court of the United States, dist. of Cal. The United States of America vs. The Western Pacific Railroad Company et al. Citation.

Due service of a copy of the within citation hereby acknowledged this 19th day of June, 1879.

PHILIP TEARE,
U. S. Att'y.

Filed 19 June, 1879. L. S. B. Sawyer, cl'k. By J. F. O'Beirne, dep'y cl'k.

1 *Subpœna.*

UNITED STATES OF AMERICA:

Circuit court of the United States, ninth circuit, district of California, in equity.

The President of the United States of America, greeting: To the Western Pacific Railroad Company, and Charles McLaughlin.

You are hereby commanded that you be, and appear, in said circuit court of the United States aforesaid, at the court-rooms in San Francisco, on the 2d day of April, A. D. 1877, to answer a bill of complaint exhibited against you in said court, by the United States of America, and to do and receive what the said court shall have considered
2 in that behalf. And this you are not to omit under the penalty of five thousand dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 21st day of February, in the year of our Lord one thousand eight hundred and seventy-seven, and our Independence the 101st.

[SEAL.] L. S. B. SAWYER, *Clerk.*

Memoranda pursuant to Rule 12, *Supreme Court, U. S.*

You are hereby required to enter your appearance in the above suit on or before the first Monday of April next, at the clerk's office of said

court, pursuant to said bill; otherwise the said bill will be taken pro confesso.

L. S. B. SAWYER, *Clerk.*

3 (Endorsed:)
OFFICE U. S. MARSHAL.
District of California:

I hereby certify that I received the within writ on the 21st day of February, 1877, and on the 26th day of February, 1877, at the city and county of San Francisco, in this district, I personally served the same on Charles McLaughlin, one of the defendants herein named, by delivering to and leaving with him a true copy of this writ.

E. P. MARSELLUS, *U. S. M.*,
By HORACE BACON, *Deputy.*

SAN FRANCISCO, *Feb'y* 26, 1877.

(Endorsed:) Filed 26th Feb'y, 1877. L. S. B. Sawyer, clerk. By J. F. O'Beirne, dep'y cl'k.

4 *Bill of complaint.*

In the circuit court of the United States, ninth circuit for the district of California.

To the honorable the judge of the circuit court of the United States for the ninth circuit, district of California.

John M. Coghlan, United States attorney in the district of California, on behalf of the United States of America brings this his bill of complaint against the Western Pacific Railroad Company, an incorporation organized within and under the laws of the State of California, and Charles McLaughlin, a resident of this district; therefore your orator complains, and says:

That by the several acts of Congress of the United States, approved July 1st, 1862, and amended July 2d, 1864, and March 3d, 1865, and by the joint resolution of 2d March, 1866, certain lands to be there-
5 after selected were to be granted to the said Western Pacific Railroad Company, provided said incorporation should complete a certain railroad and telegraph line in said several acts mentioned and described, and within the time and in the manner therein specified and set out, excluding and excepting from such grant all mineral lands embraced within the boundaries of said grant. That afterwards, to wit, on the 1st day of February, A. D. 1870, the commissioners, appointed for such purpose, filed with the Secretary of the Interior, at his office in the city of Washington, in the District of Columbia, United States of America, an official statement, representing therein that the said line of railroad and telegraph had been completed and equipped in the manner provided in the said several acts of Congress relative to the Western Pacific Railroad of California. That the said Western Pa-
6 cific Railroad Company by its agent, Charles McLaughlin, on the 24th day of March, A. D. 1870, made and filed with the register and receiver of public lands, subject to sale at San Francisco, California, its original selection of lands within the proper circuits, as provided in the said several acts of Congress. That among the lands so selected by the said Western Pacific Railroad Company was embraced the northeast quarter of section twenty-nine, in township one north, of

range one east of Mount Diablo meridian, in the county of Contra Costa, in the State of California, containing one hundred and sixty acres of land. That thereafter said selection of lands were received at said land office, and was allowed by the register and receiver of the said land district of San Francisco, and return of said selections was there duly made by the said register and receiver to the General Land Office, at Washington, District of Columbia. That thereafter, to
7 wit, on or about the 31st day of May, A. D. 1870, United States letters patent in due form of law were issued to the said Western Pacific Railroad Company, for the said northeast quarter of section twenty-nine, in township No. one north, of range one east Mount Diablo meridian, and delivered to the said Western Pacific Railroad Company and came into the possession of the said Western Pacific Railroad Company.

And your orator further shows that the said parcel of land herein described and embraced in said letters patent granted, and hereinbefore described, was at the time the said Western Pacific Railroad Company selected the same, and applied for a patent for the same, and prior thereto, and ever since have been and now are mineral lands of the United States, containing valuable quicksilver and cinnabar deposits. That for more than ten years last past the said lands
8 have been settled upon and occupied by persons engaged in mining in and upon the said land. That the mineral character of said lands has been well known during all the time it has been settled upon and occupied.

And your orator further shows that the map of the public survey of said lands was filed by the surveyor-general of the United States, in the office of the register and receiver for the district of San Francisco, on the 17th day of October, A. D. 1873, and that on said official map said lands are located as mineral lands.

Your orator further shows that by the terms of said letters patent all mineral lands are specially excepted and excluded from the operation of said letters patent.

Your orator further shows that the allowance of said selection by the said register and receiver and the return thereof to the General Land Office at Washington, District of Columbia, and the
9 issue of said United States letters patent, and all the acts pertaining thereto and connected therewith, were done and performed unadvisedly and through inadvertence and mistake.

And your orator further shows that as soon as the said unlawful and unwarrantable selection and allowance was discovered, and said mistake and error in the issuing of said patent therein known to the United States and its officers and representatives, to wit, on or about (the 30th day of March, A. D. 1874) the 30th day of March, one thousand eight hundred and seventy-four, demand was made by your orator of the Western Pacific Railroad Company for the return of the said patent to the proper officer of the United States, that the same might be set aside, annulled, and cancelled, which the said Western Pacific Railroad Company then and there and ever since has refused to do.

10 And your orator further shows that they are informed and believe, and therefore aver the fact to be, that the said Western Pacific Railroad Company, after it had received the aforesaid United States letters patent, and after the return of the same to the proper office of the United States had been demanded, as aforesaid, transferred the said letters patent to the Central Pacific Railroad Company. That said Central Pacifi cRailroad Company afterwards transferred the

same to David Cox, who afterwards transferred said United States patent to the defendant, Charles McLaughlin, who now has the same in his possession and custody, and pretends to be the owner of the same and of the parcel of land herein described.

And your orator further shows that the said Charles McLaughlin, at the time the said United States letters patent was transferred to him as aforesaid, then and there well knew and had notice that the
11 land described in the said patent hereinbefore described was mineral lands of the United States occupied as aforesaid; that they were wholly unfit for cultivation and agricultural purposes, and were not and never had been subject to be granted under the provisions of the several acts of Congress, and that the said letters patent had been unlawfully obtained by the Western Pacific Railroad Company, as aforesaid.

And your orator charges that by reason of the premises said United States letters patent are illegal, fraudulent, and void; that they have and cast a cloud upon the title of the United States to said lands, and embarrass and obstruct the free and clear alienation of the same to bona fide purchasers.

And your orator prays that the same be adjudged and decreed to be null and void and wholly vacated, annulled, and set aside and
12 cancelled and held for naught, and for such other and further relief as to your honor shall seem meet in the premises.

May it please your honor to grant to your orator the writ of subpœna, to be directed to the said Western Pacific Railroad Company and Charles McLaughlin, commanding them by a day certain, and under a certain penalty herein inserted, to be and appear before your honor and this honorable court, then and there to answer all and singular the premises, and to stand to and perform and abide such further order, direction, and decree as may be made against them.

And your orator, as in duty bound, will ever pray.

J. M. COGHLAN,
U. S. Attorney.

(Endorsed:) Filed 21 February, 1877. L. S. B. Sawyer, clerk.

13 *Answer of Charles McLaughlin.*

In the circuit court of the United States, ninth circuit, for the district of California.

THE UNITED STATES OF AMERICA
vs.
THE WESTERN PACIFIC RAILROAD COMPANY and Charles McLaughlin.

The answer of Charles McLaughlin, one of the defendants, to the bill of complaint of the United States of America, complainant.

This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exceptions which can or may be had or taken to the many errors, uncertainties, and other imperfections in said complainants' said bill of complaint contained, for answer thereto, or unto so much thereof as he is advised is material or
14 necessary for him to make answer unto, this defendant, answering, says that he denies that any lands were by said acts of Congress to be selected by the Western Pacific Railroad Company, but

the said acts particularly pointed out the lands granted; this defendant, further answering, denies that all mineral lands within the boundaries of the grant were excluded or excepted from the grant.

This defendant, further answering, admits that he, as the agent of the Western Pacific Railroad Company, did file with the register and receiver at San Francisco, on the 24th day of March, A. D. 1870, a paper which complainant calls an original selection, but he denies that such paper was ever provided for in said acts of Congress. He admits that the northeast quarter of section twenty-nine, in township one, north of range one east, Mount Diablo base and meridian, was described
15 in said paper. He admits that the lands were certified to the company, and the company received a patent as alleged.

And this defendant, further answering, says that he denies that the lands described in the bill, or any part of the same, are or ever were mineral lands, or that said lands, or any part of the same, contained any quicksilver or cinnabar deposits, and he denies that the said lands were settled upon or occupied by any person engaged in mining at any time. He denies that the mineral character of said land was well known, or that they were mineral lands.

And this defendant, further answering, says that long prior to the issuing of the patent, the said lands were surveyed, and no patent is ever issued prior to a survey.

16 And this defendant, further answering, shows that the said pretended map filed by the surveyor-general on the 17th day of October, A. D. 1873, in the office of the register and receiver, was made long after the patent was issued and long after the lands were surveyed, and is of no binding force or effect.

This defendant, further answering, denies that by the terms of the patent all mineral lands are excepted from the effect of the patent.

This defendant denies that the selection was allowed by the register and receiver, or that the return to the Land Office at Washington or the issuance of the patent or any of the acts pertaining thereto was done or performed unadvisedly or through inadvertence or mistake.

And this defendant denies that any demand was ever made upon the Western Pacific Railroad Company to return the said patent.

17 This defendant denies that the Western Pacific Railroad Company ever transferred the letters patent to the Central Pacific Railroad Company, or that the said Central Pacific Railroad Company ever transferred the same to Daniel Cox, or that said Cox ever transferred the same to this defendant. But this defendant admits that he now has the patent in his possession, and he avers that he is the owner of said piece of land.

This defendant denies that he ever knew or had notice that the land described in the patent and set forth in the bill or any part of the same was mineral land or was occupied; and he denies that they were mineral lands; he denies that said lands were unfit for cultivation or agricultural purposes. And he denies that the said lands were not subject to be granted, or that he ever had any notice of the same. And he denies that said letters patent ever were unlawfully obtained by
18 the Western Pacific Railroad Company.

The defendant denies that the patent is illegal or void or fraudulent, and he denies that the United States has any title to the same.

This defendant, further answering, shows that on the 22d day of June, 1870, the Western Pacific Railroad Company ceased to exist as a corporation, and there is not nor has there been any such corporation since that date. That on the said 22d day of June, A. D. 1870, the

Western Pacific Railroad Company mentioned in the complaint, by articles of association, amalgamation, and consolidation, became united with the Central Pacific Railroad Company of California, under the name and style of the Central Pacific Railroad Company. That on the 16th day of November, A. D. 1870, the Central Pacific Railroad Company, by a deed for the sum of sixteen hundred dollars, sold and
19 transferred, by a good and sufficient deed, the said land to Daniel Cox, and the said Cox did not know nor suspect, nor did he have any reason to know or suspect that the said land or any part of the same was mineral land. That afterwards this defendant purchased, for sixteen hundred dollars, said land from said Cox, and this defendant did not know nor suspect that said lands were mineral land.

Wherefore defendant prays for judgment in his favor that said patent may be adjudged to be good, and for costs.

TULLY R. WISE,
Solicitor for Def't.

STATE OF CALIFORNIA,
City & County of San Francisco, ss:

Charles McLaughlin, being duly sworn according to law, deposes and says that he is one of the defendants in the above-entitled action;
20 that he has heard read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to the matters which are therein stated on his information or belief, and that as to those matters he believes it to be true.

CHAS. McLAUGHLIN.

Subscribed & sworn to before me this 25 day of April, A. D. 1877.

JOS. F. O'BEIRNE,
Comm'r of U. S. Circuit Court, Cal.

Due service of a copy of the within answer admitted this 19th day of April, A. D. 1879.
(Endorsed:)

Att'y for Pl'ff.

Filed April 25th, 1877. L. S. B. Sawyer, clerk, by J. F. O'Beirne, deputy clerk.

21 *Replication of complainant.*

In the circuit court of the United States, ninth circuit, for the district of California.

UNITED STATES
vs.
WESTERN PACIFIC RAILROAD COMPANY AND Charles McLaughlin.

And the said plaintiff, as to the said answer of said defendant, Charles McLaughlin, by him filed in the above-entitled action, saith the said plaintiff, by reason of anything by the said defendant alleged in said answer, ought not to be barred from having and maintaining its aforesaid action.

And the said plaintiff, further replying to the said answer of said defendant, Charles McLaughlin, saith that the said plaintiff, by reason of anything contained and alleged in said answer, ought not to be
22 barred from having and maintaining its aforesaid action against the said defendant, because the said plaintiff saith that by the several acts of Congress of the United States certain lands were to be granted to the Western Pacific Railroad Company upon its compliance

with the provisions of said acts of Congress, and that all mineral lands were specially excepted and excluded from such grant by said acts of Congress, save lands containing iron. That under the provisions of said several acts of Congress the northeast quarter of section twenty-nine, in township number one, north of range one east, Mount Diablo base and meridian, was within the boundaries of such grant as defined by said several acts of Congress, and a patent therefor was issued to the Western Pacific Railroad Company, as charged in plaintiff's complaint. That said land is and was mineral land, to wit, said land contained valuable deposit of quicksilver in rock in place as well as
23 cinnabar in surface earth. That said land was settled upon and occupied, and has been so occupied continuously since A. D. 1866. Said plaintiff alleges that there was no legal survey of said land by the Government of the United States until about the year A. D. 1873, and a map of said survey was filed by the surveyor-general of the United States for the State of California in the office of the register and receiver of public lands at San Francisco on the 17th day of October, A. D. 1873. And all mineral lands, by the terms of said patent to said Western Pacific Railroad Company, are specially excluded and excepted from the effects of said patent.

Plaintiff further saith that the said patent was inadvertently issued by the Government of the United States to the Western Pacific Railroad Company; that afterward, to wit, on the 24th day of May, 1874, the Government of the United States, through its duly authorized agents, demanded of the defendant the relinquishment of the said patent.

24 The plaintiff further saith that about the year A. D. 1869, said defendant, McLaughlin, was notified that said land was mineral land, and contained valuable deposits of quicksilver and cinnabar. Plaintiff further saith that said patent is illegal, fraudulent, and void, and that plaintiff has the only valid title to said land.

Wherefore plaintiff prays judgment in its favor, and that said patent be set aside and declared void, and for its costs.

J. M. COGHLAN,
U. S. Att'y and Solicitor for Complainant.

(Endorsed:)

Service of a copy of the within replication, made this 6th day of July, A. D. 1877.

TULLY R. WISE,
Solicitor for Def't McLaughlin.

Filed July 6th, 1877. L. S. B. Sawyer, clerk. By J. F. O'Beirne, dep'y cl'k.

25 *Enrollment.*

At a stated term of the circuit court of the United States of America for the district of California, held at the court-room, in the city of San Francisco, on Thursday, the 20th day of June, in the year of our Lord one thousand eight hundred and seventy-eight.

Present the honorable Lorenzo Sawyer, circuit judge.

THE UNITED STATES
vs.
THE WESTERN PACIFIC RAILROAD COMPANY and Charles McLaughlin.

The complainant herein filed its bill of complaint, which is hereto annexed, on the 21st day of February, A. D. 1877.

Thereupon a subpœna to appear and answer herein was issued,
26 returnable on the first Monday of April, A. D. 1877, and personal service thereof made upon the defendant, Charles McLaughlin, prior to the return day thereof. Said subpœna, with the marshal's return thereon endorsed, is hereto annexed.

Both defendants appeared herein by Tully R. Wise, as their solicitor. The defendant, Charles McLaughlin, filed his answer herein, and which is hereto annexed, on the 25th day of April, A. D. 1877.

On the 6th day July, A. D. 1877, complainant filed a replication to said answer, which replication is hereto annexed.

Thereafter said cause having come on for hearing, a final decree was duly filed and entered herein in the words and figures following, to wit:

Decree.

At a stated term of the circuit court of the United States of America for the district of California, held at the court-room, in the
27 city of San Francisco, on Thursday, the twentieth day of June, in the year of our Lord one thousand eight hundred and seventy-eight.

Present, the honorable Lorenzo Sawyer, circuit judge.

THE UNITED STATES
vs.
THE WESTERN PACIFIC RAILROAD COMPANY, and Charles McLaughlin. } In equity. No. 1733.

This cause came on to be heard at this term, and was argued by counsel, and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed as follows, viz: That the land described in the bill of complaint filed herein, and being part of the land mentioned in the letters patent issued on or about the 31st day of May, A. D. 1870, by the United States to the defendant, the said Western Pacific Railroad
28 Company, the title to which land was afterwards, by several mesne conveyances, vested in the said defendant, Charles McLaughlin, being that certain tract of land described as follows, to wit: The northeast quarter of section twenty-nine, in township number one, north of range number one east, of Mount Diablo base and meridian, in the county of Contra Costa, California, containing one hundred and sixty acres of land, were mineral lands within the meaning of the acts of Congress referred to in the bill of complaint, and not subject to entry by said Western Pacific Railroad Company, and said letters patent, which are fully described in the bill herein now on file in this cause, were issued by mistake and without authority of law as to the lands in the bill of complaint and in this decree described, and that said letters patent as to said land herein mentioned, and only as to
29 said land be adjudged and decreed to be null and void, and that the same be to that extent set aside, cancelled, and held for naught, and that the grantee and all others deriving title to said land hereinbefore described under said letters patent take nothing by reason thereof.

And it is further ordered, adjudged and decreed that the defendants pay to the complainant, the United States, his costs in this suit

as taxed, amounting to the sum of three hundred and twenty-three dollars and seventy cents.

(Signed) LORENZO SAWYER,
Circuit Judge.

Full satisfaction of this decree, as to the costs herein inserted as taxed, is hereby entered.

November 7th, A. D. 1878.

PHILIP TEARE,
United States Attorney.

(Endorsed:) Filed and entered June 20th, A. D. 1878. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep'y cl'k.

30 *Memorandum of costs.*

UNITED STATES OF AMERICA:

In the circuit court of the United States, of the ninth circuit in and for the district of California.

THE UNITED STATES, PLAINTIFF, *vs.* THE WESTERN PACIFIC RAILROAD COMPANY and Charles McLaughlin, defendants. } Memorandum of costs and disbursements.

DISBURSEMENTS.

Marshal's fees	$2 50
Clerk's fees	$37 90
Witness' fees; mileage and per diem (see Exhibit A, attached to this memorandum)	$99 00
Examiner's fees	$125 00
United States attorney, docket fee	20 00
" " " fees for depositions taken and admitted in evidence; twenty-five depositions, @ $2.50 each	62 50
	346 90
Am't disal'd on Ex. A	13 20
Taxed at	$333 70

L. S. B. SAWYER, *Clerk.*

Deduct $10 from	$333 70
	10
	$323 70

L. S. B. SAWYER, *Clerk,*
By J. F. O'BEIRNE,
Dep'y Cl'k.

31 UNITED STATES OF AMERICA,
District of California, City and County of San Francisco, ss:

John M. Coghlan, being duly sworn, deposes and says that he is the attorney for the complainant, the United States, in the above-entitled cause, and as such is better informed relative to the above costs and disbursements than the said complainant; that the items in the above memorandum contained are correct to the best of this deponent's knowl-

edge and belief, and that the said disbursements have been necessarily incurred in the said cause.

J. M. COGHLAN.

Subscribed and sworn to before me this 22d day of June, A. D. 1878.

JOS. F. O'BEIRNE,
Commissioner U. S. Circuit Court, &c.

32 To Tully R. Wise, esq., attorney for defendants:

You will please take notice that on Tuesday, the 25th day of June, A. D. 1878, at the hour of 10 o'clock a. m., I will apply to the clerk of said court to have the within memorandum of costs and disbursements taxed pursuant to the rule of said court in such case made and provided.

J. M. COGHLAN,
Attorney for Complainant.

Taxation cont'd from 25 June, 1878, 10 a. m.
to 26 " " " " "
" " from " " " " " "
to 27 " " " " "
" " from " " " " " "
to 1 July, " " " "

33 EXHIBIT A.

Witnesses' mileage and per diem fees.

Joshua Marsh, Clayton, Contra Costa Co., Cal.,	84 miles	$4 20
" " " " " "	3 days' attend	4 50
Thomas Priaulx " " " " "	84 miles	4 20
" " " " " "	one day's attend.	1 50
Jonathan Donner " " " " "	84 miles	4 20
" " " " " "	two days' attend.	3 00
John H. Welch " " " " "	84 miles	4 20
" " "	one day's attend.	1 50
Richard Tayler, San Francisco,	3 days' attend	4 50
Archibald Stuart, Clayton, Contra Costa Co.,	84 miles	4 20
" "	three days' attend.	4 50
J. L. Shannon, Walnut Creek " " "	32 miles	1 60
" " "	three days' attend.	4 50
Isaac T. Sherman, Clayton " " "	84 miles	4 20
" " "	three days' attend.	4 50
John Denkinger " " "	60 miles	3 00
" "	three days' attend.	4 50
John Grummett " " " "	84 miles	4 20
" "	three days' attend.	4 50
John Donner, jr., " " " "	84 miles	4 20
" " "	four days' attend.	6 00
W. L. Strong,	one day's attend	1 50
R. F. Knox,	one day's attend	1 50
Caleb A. Bramlet, Napa, Napa	" 82 miles	4 10
" " "	one day's attend	1 50
Duncan McNee,	one day's attend	1 50
34 I. K. Carter,	one day's attend	$1 50
G. W. Strong,	one day's attend	1 50
		$99 00

Service of a copy of the within notice, &c., acknowledged this 22d day of June, 1878.

TULLY R. WISE,
Att'y for Def't McLaughlin.

							$99 00
Joshua Marsh,	2	days	instead	of	3	$1 50	
Jonathan Donner,	1	"	"	"	2	1 50	
Rich. Taylor,	2	"	"	"	3	1 50	
					& no mileage	4 20	
A. Stuart,	2	days	"	"	3	1 50	
J. L. Shannon,	"	"	"	"	"	1 50	
John Donner, sr.,	3	"	"	"	"	1 50	
							13 20
							$85 80

(Endorsed:) Filed this 22' day of June, 1878. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep. cl'k.

35 *Certificate of clerk to enrolled papers.*

Whereupon said pleadings, subpœna, final decree, and memorandum of taxed costs are hereto annexed, said decree being duly signed, filed, and enrolled pursuant to the practice of said circuit court.

Attest, &c.

[SEAL.]

L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE, *Dep'y Clk.*

(Endorsed:) Enrolled papers filed 22d June, 1878. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep'y cl'k.

36 *Stipulation permitting the introduction of patent at hearing of cause.*

In the circuit court of the United States, ninth circuit, district of California.

THE UNITED STATES
vs.
WESTERN PACIFIC RAILROAD COMPANY AND Charles McLaughlin.

It is stipulated and agreed that the plaintiff may at the hearing of the above-entitled action before the court read as evidence the patent (or a copy thereof) issued by the Government of the United States on the 30th day of May, A. D. 1870, and delivered to the Western Pacific Railroad Company, and which said patent contains a description of the land in controversy. And that no objection will be made by the defendant to the introduction and reading of said evidence on account of the same not having been filed with the commissioner at the taking of the testimony in the above-entitled action.

37 Dated at San Francisco, July 9th, 1877.

J. M. COGHLAN,
U. S. Att'y & Solicitor for Comp't.
TULLY R. WISE,
Solicitor for Def't.

(Endorsed:) Filed July 9th, 1877. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep'y cl'k.

38 *Caption to deposition on behalf of complainant.*

Circuit court of the United States, district of California.

THE UNITED STATES
vs.
THE WESTERN PACIFIC RAILROAD COMPANY and Charles McLaughlin.

Be it remembered that on this 27th day of June, A. D. 1877, at my office in the United States courts building in the city and county of San Francisco, State of California, before me, J. F. O'Beirne, an examiner in chancery, duly appointed by the circuit court of the United States for the ninth circuit and district of California, personally appeared Joshua Marsh, Thomas Priaulx, Jonathan Donner, John H. Welch, Richard Taylor, Archibald Stuart, J. L. Shannon, Isaac T. Sherman, John Denkinger, John Grummett, John Donner, sr., W. L. Strong, R. F. Knox, Caleb A. Bramlet, Duncan McNee, and J.
39 K. Carter, witnesses on behalf of the complainant in the above-entitled action.

A. Heath, esq., appeared as counsel for said complainant, and Tully R. Wise, esq., as counsel for defendant.

And the said witnesses having been by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, in the cause aforesaid, testified as follows:

Testimony of Joshua Marsh.

Examination-in-chief of JOSHUA MARSH by Mr. HEATH:

Question 1. State your name, age, residence, and occupation.

Answer. Name, Joshua Marsh; age, forty-seven and over; place of residence near Mount Diablo, two miles and a half above Clay-
40 ton; been there since 1851; occupation, I have been mining part of the time in that time, and farming a little. I had some sheep up there.

Question 2. What knowledge, if any, have you of mining and minerals?

Answer. About twelve years.

Question 3. Have had mining knowledge about twelve years?

Answer. Yes, sir; I have been mining there about twelve years; in quicksilver and copper, and other metals; mining and prospecting.

OBJECTION. (Mr. WISE).—The answer is objected to as not responsive to the question; and the witness does not show what knowledge he has at all.

Mr. HEATH:

Question 4. How far do you reside from the northeast quarter
41 of section 29, township 1 north, of range 1 east, Mount Diablo meridian?

Answer. About a mile and a half. It is just a mile and a half from there across the line of the government survey. I helped survey that line.

Question 5. Have you been upon that land?

Answer. I have been upon that land for twenty years; crossed through it since 1851. I came there the fall of 1851, and have known that land ever since.

Question 6. How often have you been over the land?

Answer. I have been over it a year and sometimes a half a dozen times; and I have never missed being over that part once, because I had my sheep on the ground two or three years; that is, passed over it, backwards and forwards.

Question 7. Describe the topography of the northeast quarter
42 of section 29, township 1 north, of range 1 east, Mount Diablo meridian.

Answer. It is hilly, abrupt land.

Question 8. What is the altitude of the hills?

Answer. I should think one is about two hundred feet above the level. It is a high, big hill, part of it chaparral, to the best of my knowledge, I should judge. I have never measured the altitude, but I think by the appearance it is about that. I wouldn't say positively it was just that, but I should think nearly that.

Question 9. Do you know the value of that quarter section for grazing or agricultural purposes?

(Objected to on the ground that the witness is not shown to be competent to testify upon that point.)

Answer. Yes, sir; I do.

43 Question 10. What experience, if any, have you had in farming or cattle or sheep raising in the State of California?

Answer. Five years I have had sheep, and I have farmed a little since 1851, three or four acres of vineyard and orchard.

Question 11. State the value of that quarter section for agricultural or grazing purposes.

(OBJ.—The same objection.)

Answer. To my knowledge—I wouldn't give—the value—I don't think it is worth the government price—the land for agricultural purposes. I wouldn't give twenty-five cents an acre for it for agricultural or grazing purposes.

Question 12. Describe the kind of vegetation, and the amount that grows upon that land.

(OBJ.—Objected to as irrelevant.)

44 Answer. Well, there is a kind of a grass we call squirrel grass that mostly grows on it, and it is very small at that, and scarce, too, at that. I had my sheep three years on it, and never paid anything. Dr. Ryder said I could run them there if it was worth anything to me. He didn't charge me nothing—run them across from my range—running them over. For five years there has been no grass there to amount to anything. I run them across, and took them there to water more than anything else.

Question 13. Is that squirrel grass good feed for sheep?

Answer. No, sir. It is good when it is young, and not good at any other time. It is good for a little while in the spring. It will kill them when it gets dry. It runs into their head and blinds them. It
45 will do for a little while when it is green; but after it is dry it won't do for sheep at all.

Question 14. You state that for the last twelve years you have mined and prospected for quicksilver and copper.

Answer. Yes, sir; and other minerals, too.

Question 15. State if that has been your main business.

Answer. Yes, sir; that has been my main business. I have had some sheep, but I have had men with them most of the time, and I have been prospecting most of the time.

Question 16. Have you examined the northeast quarter of section 29, with reference to the mineral deposits thereon?

Answer. Yes, sir; I have mined for him and mined for myself.

Question 17. State whether that land contains mineral deposits.

46 Answer, Yes, sir; it does; quicksilver—cinnabar.

Question 18. State what the extent of the deposits are, as far as you have seen.

Answer. I should think it was pretty rich by the way I panned it out. I got the rock on a part of it.

Question 19. Have you examined the land with reference to fixing its value for mining purposes?

Answer. Yes, sir; and other lands around there.

Question 20. You have that land?

Answer. Yes, sir.

Question 21. Do you know its value for mineral purposes?

Answer. I think it is worth ten dollars, and may be more. It may be worth more.

47 (OBJ.—Answer objected to as not responsive to the question.)

Question 22. You can answer that you do know it, if such is the fact.

Answer. Yes, sir, I do know its value.

Question 23. State the value of that land for mining purposes.

(OBJ.—Mr. WISE. I object, because Mr. Marsh does not show that he is competent to testify. He does not show that he knows its value, and it is asking for the opinion of the witness.)

Answer. It is worth ten dollars and more by panning it out, the average that I got in the rock, and in what I panned out. It might be a great deal more, too. To the best of my knowledge I should think the average of the quicksilver and cinnabar that I panned out in the

48 rock that I got, that is, a portion of it. I could not say that it was all worth that, but some portions and parts of it. It is richer in some places than it is in others.

Mr. HEATH:

Question 24. About how many acres of the land would you fix the value of at ten dollars per acre.

(OBJ.—The same objection.)

Answer. About forty acres; this big hill where it runs.

Question 25. How much would the balance—the one hundred and twenty—be worth per acre for mining purposes?

(OBJ.—The same objection.)

Answer. I should think it was worth about five dollars, according to what I prospected. I could not say whether it is worth more or less; but according to what I prospected.

49 Question 26. Mr. Marsh, is the land occupied or unoccupied?

Answer. Dr. Ryder Powell has been occupying it; I saw him there a good many times.

Question 27. How long has Dr. Ryder Powell occupied that land?

Answer. According to the best of my knowledge, since 1866.

Cross-examination by Mr. WISE:

Question 28. Mr. Marsh, you testified about the character of this land before in the United States Land Office, did you not?

Answer. I have of my land; the character——

50 Question 29. Did you of this?

Answer. Not this land of Dr. Ryder Powell. I think not, to the best of my knowledge.

Question 30. You say that you have been living where you now are, farming and mining and prospecting for twelve years?

Answer. Yes, sir. I have been living since 1851 on this land; but I have been prospecting for copper and quicksilver and other mines about twelve years.

Question 31. How much money did you ever make at mining?

(OBJ.—Objected to as irrelevant.)

Answer. I never made much. I have got a good deal of ore. It is on the dump there, ready to assay. They say it is good—all the assayers.

51 Question 32. Have you supported yourself on the land where you live, and on this land by keeping flocks and farming?

Answer. No. There is no farming on my land; and on this of Dr. Powell's there is about five acres that he farms a little; that is, by raising hay, a little grain for hay—about five acres; four or five acres.

Question 33. How many years did you say you run your sheep on this land?

A. Well, between three and five years. I have been running them across on my land, and run them over there.

Question 34. How many sheep did you have?

Answer. I had from four hundred—when I got through with them I had over a thousand head. I took them on shares, most of them; I had only a few of my own.

52 Question 35. You raised them on this land and on other land like it in the neighborhood?

Answer. I run them across it. I kept them on this more on account of the water. There was good water there.

Question 36. That is where you raised them?

Answer. I run them through. I had some three or four or five quarter sections. He gave me the privilege of running them across.

Question 37. You have been running the sheep all the time upon what you call quicksilver land?

Answer. No; a good deal of it has been patented. It is on patented land where my camp has been.

Question 38. It is all the same kind of land?

53 Answer. No, sir; it is not. There is a good deal of level land.

Question 39. Why did you run your sheep on his level land if there was no grass on it?

Answer. I got the privilege, and I could run them across, because it was worth nothing to him. I run them on that, and on other too; I had some other sections that cost me two hundred dollars, on good land.

Question 40. On what quarter section is that?

Answer. Some of it is mountainous, mineral land—government land. Then I have some eighty acres below his land.

Question 41. How many acres altogether?

Answer. A section, or a section and a half. About a mile above this land, a section. It is government land clear up to the top of the mountain.

54 Question 42. Then you had about a section, or a mile square, of government land?

Answer. I had, besides this that I hired, and this land. I had over two sections of land there.

Question 43. You say you helped to survey this land?

Answer. Yes, sir; I was with them.

Question 44. When?

Question 106. Did you ever get anybody to take hold of them and work them?

(OBJ.—The same objection.)

Answer. Yes, sir; the men are negotiating now for the property.

Question 107. I ask you if you have got anybody to take hold and work them?

(OBJ.—The same objection.)

Answer. I got men here to advance money to work them.

Question 108. Who are they?

72 (OBJ.—Objected to upon the same ground, and also upon the ground that defendant has no right to inquire into the private affairs and private business of the witness.)

Answer. There are some in Pacheco. They have not paid much here in the city, but there is a company in Pacheco—Garry Baldwin and Lewis Whitmire—they advanced seventy dollars at one time, and Mr. Bennett, who is in the store there with Mr. Baldwin.

Question 109. Is that all?

(OBJ.—The same objection.)

Answer. Yes. There are men here that have advanced a hundred dollars.

Question 110. Who are they?

73 Answer. Mr. Josse Gus' Brothers advanced one hundred dollars; not that mine. I have sold four or five hundred dollars' worth of shares out of this mine to different parties to help work it.

Question 111. Is that all?

Answer. Ryan, Donner, and several parties there; they bought in. We got such a prospect, that they bought in and helped me work it.

Question 112. Is that all the money that has been advanced on those mines up there, that you know of?

Answer. No, sir; there is more. There has been about a thousand dollars in money, besides the labor. At one place we run five hundred feet, and on my land there has been about the same, I suppose.

Question 113. That is during how many years?

(OBJ.—The same objection.)

74 Answer. On mine, that has been about a year.

Question 114. During how many years has all this taken place?

Answer. Some of it has been ten or twelve years, but this joining mine has been within about a year.

Question 115. How long did you work in the Welch mine?

Answer. I could not say how long. I worked there at different times.

Question 116. How many men were working with you at the time you were working there?

(OBJ.—Objected to as irrelevant.)

Answer. One time there was eight or ten, and other times three or four. I could not say positively all. It was different. Some-

75 times there was twenty. I have worked for the company at different times, and been there with my sheep—round in there—for three, or four, or five years; into the mine every week for I guess there ain't a month since it was discovered but what I have been on the ground.

Question 117. Who was the head of the company when you were working there?

Answer. Mr. Oglesby and Mr. Phillips first; the second time Mr. Ryan, of San Francisco, was superintendent.

Question 118. What Ryan?

Answer. A. J. Ryan, of San Francisco. He has been superintendent this last time when they worked it.

Question 119. Who is at the head of the mine now; Mr. Phillips?

Answer. Mr. Phillips, I believe, owns part of it, and Mr. Ryan
76 owns part of it. Several other parties own, but they own the principal part of it. He gave them so much to work it there—gave them a part of the mine. That is what I heard.

Redirect examination by Mr. HEATH:

Question 120. You say that you worked on this place of Dr. Powell, prospecting?

Answer. I have prospected there, yes sir.

Question 121. Upon what part of the land?

Answer. Mostly near the Welch mine. That is where it crops out.

Question 122. State whether you have worked on the other side of the hill from the Welch mine for Dr. Powell.

77 Answer. Yes sir.

(OBJ. (Mr. WISE).—I object to all this because it is re-examination upon questions not brought out in cross-examination.)

Mr. HEATH:

Question 123. Can you get quicksilver out of the ground without digging holes for it?

Answer. Well, sometimes we find a piece right on top, but generally we have to dig down from one to ten feet, according to the pitch. It is about forty-five degrees—the pitching. Sometimes we get it pretty near, and sometimes we have to go pretty deep.

Question 124. How near the northeast quarter of section 29 was it that you took out the seven thousand dollars' worth of quicksilver?

Answer. Well, it is probably about a hundred rod, I should
78 think. It is pitching forty-five degrees. They find good metal up to the line, and over the line. They find it clear up—paying ore.

Question 125. I will ask you to state whether quicksilver crops out all over this land of Powell's.

Answer. Well, there is cropping all over it. It runs into one corner of the lot, and goes out at the other.

Question 126. In your cross-examination you spoke of ore on the dump at the open cut.

Answer. Yes, sir; there is plenty there now.

Question 127. How far has that cut been dug upon the land?

Answer. I think about a hundred feet, that is in; it may be more. I should judge—I haven't been there a great many times—I should judge about—part of it is caved in. I should think a hundred
79 or a hundred and fifty feet. They turned the water out of the creek and it backed it right in and filled up about half of his cut.

Question 128. At the sides and end, where he quit work at the open cut, does it show quicksilver?

Answer. Yes, sir; you can just pan it out there. You can take it out from under the boulders, and get good rock. I had a lot of rock that I panned out that I brought down before.

STIPULATION.—It is stipulated and agreed by and between the respective counsel that the reading of the above deposition, and of the other depositions which may be taken herein, to the respective wit-

nesses, and the signing thereof by said witnesses, are waived; the transcript from the reporter's notes being accepted as correct.

80 *Deposition of Thomas Priaulx.*

Examination-in-chief of Thomas Priaulx by Mr. HEATH:

Question 1. State your name, age, place of residence, and occupation.

Answer. Name, Thomas Priaulx; age, fifty-one years; place of residence, Contra Costa County; occupation, farmer.

Question 2. Do you know the northeast quarter of section 29, in township 1 north, of range 1 east, Mount Diablo meridian?

Answer. I do.

Question 3. How long have you known the land?

Answer. I have known the land thirteen years.

Question 4. How long have you been a farmer in California?

81 Answer. Twenty-two years.

Question 5. How long have you resided near this land?

Answer. Thirteen years.

Question 6. How frequently have you visited it?

Answer. I have been through it most every year, except I was in Nevada four years in that time. I was not on the land during four years.

Question 7. Were you upon the land during the winter, summer, fall, and all seasons of the year?

Answer. Yes, sir; except them four years.

Question 8. Describe the topography of that land.

Answer. The land is mountainous.

Question 9. What vegetation grows upon the land? Describe the amount, &c.

82 Answer. There is a little grass—what is generally called squirrel grass; but very little of it; very short. I never seen but very little on the land.

Question 10. What is the soil?

Answer. The soil is very rocky, very poor.

Question 11. Deep or shallow?

Answer. Shallow, very shallow.

Question 12. Have you raised cattle and sheep?

Answer. No, sir.

Question 13. Do you know the value of that land for agricultural and mining purposes?

Answer. Yes, sir.

Question 14. What is the value of that land for grazing and agricultural purposes?

83 (OBJ. (Mr. WISE.)—That is objected to, because the witness does not show that he is capable of testifying, and it is asking for his opinion of a state of facts.)

Answer. I should judge, ten cents an acre. That is more than I think it is really worth. I wouldn't have it as a gift—not for agriculture—for grazing.

Question 15. Mr. HEATH. Then I understand you to say that you consider it of a mere nominal value for agricultural and grazing purposes?

Answer. Yes, sir.

Question 16. Have you examined the land for any other purpose than for grazing and agriculture?

Answer. I have.

Question 17. State the extent of your examination.

84 Answer. I could not say exactly. I have worked a good many days on it.

Question 18. On different parts of it?

Answer. Yes, sir.

Question 19. What did you find upon the land?

Answer. I found some quicksilver—what is generally called quicksilver. I am not much of a judge of quicksilver, only what I have seen in retorts from other land. I have seen the same kind of rock; found the same kind of rock.

Question 20. State whether the quicksilver was spread upon or diffused all through the land.

Answer. It was spread in places. I found it scattered about in different places.

Question 21. I will ask you to state whether you saw it upon all parts of the land—upon each forty.

Answer. I have.

85 Question 22. How much of that land will produce grain, if any?

Answer. There may be three or four acres, by irrigating, that will raise a little grain.

Cross-examination by Mr. WISE:

Question 23. Where were you born?

Answer. On Gurnsey Island, an island belonging to England.

Question 24. What was your education as a farmer—or what?

Answer. Yes, sir, and a cooper. I have mined since I came to California some time.

Question 25. You never had any mining education?

86 Answer. No great deal—only prospecting. I have mined some. I have been mining some through the mines.

Question 26. Did you ever do any mining except up in the neighborhood of Monte Diablo?

Answer. Yes, sir; I was mining in Nevada.

Question 27. What were you mining for?

Answer. Silver mostly.

Question 28. Did you ever see on this land any ledge?

Answer. No, sir; not that I know of.

Question 29. The quicksilver that you found, was it in the soil or in the rocks?

Answer. In the rocks, and some in the soil, too.

Question 30. Were the rocks what they call flat rock?

87 Answer. Well, I suppose so; I could not say. It might have been tumbled, or might have been ledge.

Question 31. It looked like it had been broken off from somewhere, did it not?

Answered. I could not say.

Question 32. What you say you saw that you called quicksilver rock, didn't it look as if it had been broken off from somewhere? I am, of course, only asking for your opinion; you cannot tell whether it was or was not. Did it appear to have been, or not?

Answer. I should judge it would been.

Question 33. How much of that rock did you see on this land?

Answer. I should judge about three or four ton.

Question 34. Where, on this land?

88 Answer. Yes, sir.

Question 35. Whereabouts?

Answer. On the northeast fourth of that quarter-section.

Question 36. Was it in a body or scattered around? Was it collected there?

Answer. Well, very near in a body; scattered some around.

Question 37. Had it been carried there?

Answer. I could not say. It might have been tumbled there, for all I know. It might be a ledge. I don't know.

Question 38. Was it piled up?

Answer. No; only what Powell and other men piled up. They piled some of it. The balance is in big boulders, you might call them, or ledge.

89 Question 39. How much would such rock assay, or be worth a ton; do you know?

Answer. I could not say.

Question 40. Do you know the geological character of the soil that quicksilver is usually found in?

Answer. Yes; by what I have seen worked there above Powell's on that other mine. The Welch mine.

Question 41. What is the character of the soil that quicksilver is usually found in?

Answer. It is a yellowish red soil.

Question 42. Do you know the character of metals that it is usually found with, or whether it is usually found by itself, without any other metal?

Answer. I think it is usually found by itself.

90 Question 43. How long have you been living in this neighborhood?

Answer. I have lived in this neighborhood for twenty-two years, except four years that I was in Nevada.

Question 44. Some parties have always claimed during all that twenty-two years that there was mineral in this neighborhood, have they not?

Answer. It might not been more than eighteen years since that mine was found. I don't recollect.

Question 45. Then, during eighteen years, some people have always claimed that that was a mineral district, have they not?

Answer. I believe so.

Question 46. During the eighteen years that it has been claimed that that has been a mineral district have you known anybody who
91 has ever made any money in mining in that neighborhood? You know I mean by "making money" that the income was greater than the outlay.

(OBJ.—Objected to as immaterial and not an examination upon matter drawn out upon the examination-in-chief.)

Answer. That I don't know.

Question 47. Is there any mining carried on there now that you know of?

Answer. Yes; there was some about two months ago.

Question 48. What mine was that?

(OBJ.—Objected to as immaterial.)

Answer. The Powell mine and the Welch mine.

Question 49. What was done at the Powell mine?

Answer. There was some work done.

92 Question 50. What was done?

Answer. Digging—prospecting.

Question 51. Then, by mining you mean prospecting? Is that all?

Answer. I mean digging for quicksilver.

Question 52. Digging to find if it was there, or digging to take it out after they had discovered that it was there?

Answer. Digging to take it out after it was found.

Question 53. How much did you ever know to be taken out?

Answer. I should judge ten ton.

Question 54. Who took it out?

Answer. I helped to take some out.

Question 55. For whom was it taken out, I mean?

93 Answer. For Dr. Powell.

Question 56. What was done with that ten tons of cinnabar that was taken out?

Answer. It is still there on the ground, most of it, or all of it.

Question 57. Has it been assayed that you know of?

Answer. I believe he had some of it assayed.

Question 58. Who assayed it; do you know?

Answer. I could not say.

Question 59. How long since it was taken out?

Answer. Some of it was taken out, I believe, three years ago, and some since, and some a longer time.

Question 60. When he first commenced taking it out why did he stop?

94 Answer. I suppose because he was not able to keep on to work at it there all the time.

Question 61. If he was taking out rich and valuable cinnabar, why could he not sell it and go on?

(OBJ.—(Mr. HEATH.)—That is objected to as a matter of opinion of the witness, and improper to prove in this way.)

Answer. I don't know if he tried to sell.

Mr. WISE:

Question 62. Do you know whether or not that rock that you took out was worth anything?

Answer. No; but I think it is.

Question 63. Why do you think so?

Answer. Because I have seen rock worked in the Welch mine, that I supposed was paying, and that of his was just the same looking rock.

95 Question 64. If Mr. William Ryder Powell took out ten tons of rock that was valuable, why did he not continue taking it out; do you know?

(OBJ.—Objected to as irrelevant, and as not proper cross-examination.)

Answer. I don't know.

Question 65. Mr. Prianlx, where do you live?

Answer. I have no particular home now.

Question 66. Have you got a family?

Answer. No, sir.

Question 67. What is your business?

Answer. Farming and mining.

Question 68. When you say you are farming, you mean that you are working by the day, do you not?

96 Answer. Yes, sir.

Question 69. When you say mining, you mean working when you can get a job?

Answer. I mean prospecting or working in the mines.

Question 70. You mean prospecting or working in the mines when you get a job?

Answer. Whenever I see fit.

Question 71. Did you ever carry on a farm for yourself?

Answer. Yes, sir.

Question 72. Where?

Answer. Different places. I have farmed on Marsh Creek about a mile and a half from this land of Powell.

Question 73. When?

97 Answer. From August, 1864, till July, 1871.

Question 74. And you never mined anywhere except here and in Nevada. Do you mean Nevada County, or the State of Nevada?

Answer. State of Nevada.

Redirect examination by Mr. HEATH:

Question 75. Mr. Wise asks you if that was float rock that you saw. Was it rock croppings upon the ground?

Answer. Some of it was.

Question 76. What was the other that you saw, under ground, or above ground?

Answer. Under ground.

98 Question 77. That rock that you saw under ground, did that look like broken rock—broken off from a ledge?

Answer. Yes, sir; I believe it did.

Question 78. I will ask you to state whether that rock was in the open cut that you saw?

Answer. Yes, sir.

Question 79. State whether, from the appearance of it where you saw it, it formed part of the ledge?

Answer. It may; I could not say.

Question 80. From its appearance, and the appearance of the surrounding rock, what would you say?

OBJ.—Mr. WISE—I object to that. Let him state what he saw, and let the court judge as to whether or not it was a ledge.

99 Answer. I have mined enough in Nevada to know what a ledge is. If I see a regular ledge formed, I know it.

Mr. HEATH:

Question 81. Then I will ask you if, from the appearance of that rock where you saw it in place, it did form in your opinion, part of a ledge?

OBJ.—Mr. WISE. That is objected to, because it is asking for the opinion of a witness instead of for facts, and the opinion of a witness whose examination shows that he is not an expert.

Answer. I could not say if it is a ledge or not. It may be a big slide from the mountain. There may be hundreds of tons slid from the mountain right down to the level ground.

Mr. HEATH:

Question 82. Now, Mr. Wise asks you why Dr. Powell stopped work. Do you know whether Dr. Powell has a title to that land

100 that warrants him to put up improvements to work that land?

Answer. I know he has not.

Question 83. State if you know whether that is one reason why he has not put up proper reduction works, and developed his mine?

Answer. That is one reason.

Question 84. State whether he has not this year worked, both in prospecting and opening his mine?

Answer. He has; and I have helped him work.

Question 85. State whether you have worked upon each forty acres of the hundred and sixty?

Answer. I have.

Question 86. State whether each forty bears quicksilver?

Answer. It does.

101 Recross-examination by Mr. WISE:

Question 87. Why did you not state when I asked you why Powell stopped, that you knew he had no title, and give that as one reason as you did give it, when asked the direct and leading question by the counsel on the other side?

Answer. Because I didn't think about it. I thought that was the reason why that he was not able to proceed.

Question 88. How do you know he has got no title?

Answer. I don't know; only, that I never seen any title or patent for that land.

Question 89. Did he not have as much title when he stopped work, as he did when he commenced work?

102 Answer. I suppose he did.

Question 90. Would not the title be better by his showing that it was mineral land than it would by his stopping work'?

OBJ. (Mr. HEATH).—I object to the question because it is merely asking the opinion of the witness as to a legal proposition.

Answer. He has worked it, and keeps working on it. I helped him to work on it.

Mr. WISE:

Question 91. Didn't you say that he stopped working because his title to that land was not sufficient to justify him in putting up works?

Answer. I did; but it might not justify him to put up retorts before he would have a good title for the land—a patent.

103 Question 92. The last question I asked you, which you did not answer, was whether his title would not better by working it, to show that it was valuable mineral land—if you know.

(The same objection.)

Answer. He does keep working it; but not as much as he would, I suppose, if he had a good title, so that he might be justified in building retorts.

Reading and signing of deposition waived by consent of counsel. See stipulation, page 25.

104 *Deposition of Jonathan Donner.*

Examination-in-chief of JONATHAN DONNER, by Mr. HEATH:

Question 1. State your name, age, residence, and occupation.

Answer. Name, Jonathan Donner; age, twenty-six; place of residence, Contra Costa County, near Clayton; occupation, farming and mining.

Question 2. How long have you been a miner?

Answer. About five years since I have been interested in mining.

Question 3. Have you worked the five years in mining?

Answer. A part of the time; not all the time.

Question 4. What portion of the last five years have you worked as a miner?

105 Answer. O, I suppose about—well, about a month in each year; averaged about a month in each year.

Question 70. You mean prospecting or working in the mines when you get a job?

Answer. Whenever I see fit.

Question 71. Did you ever carry on a farm for yourself?

Answer. Yes, sir.

Question 72. Where?

Answer. Different places. I have farmed on Marsh Creek about a mile and a half from this land of Powell.

Question 73. When?

97 Answer. From August, 1864, till July, 1871.

Question 74. And you never mined anywhere except here and in Nevada. Do you mean Nevada County, or the State of Nevada?

Answer. State of Nevada.

Redirect examination by Mr. HEATH:

Question 75. Mr. Wise asks you if that was float rock that you saw. Was it rock croppings upon the ground?

Answer. Some of it was.

Question 76. What was the other that you saw, under ground, or above ground?

Answer. Under ground.

98 Question 77. That rock that you saw under ground, did that look like broken rock—broken off from a ledge?

Answer. Yes, sir; I believe it did.

Question 78. I will ask you to state whether that rock was in the open cut that you saw?

Answer. Yes, sir.

Question 79. State whether, from the appearance of it where you saw it, it formed part of the ledge?

Answer. It may; I could not say.

Question 80. From its appearance, and the appearance of the surrounding rock, what would you say?

OBJ.—Mr. WISE—I object to that. Let him state what he saw, and let the court judge as to whether or not it was a ledge.

99 Answer. I have mined enough in Nevada to know what a ledge is. If I see a regular ledge formed, I know it.

Mr. HEATH:

Question 81. Then I will ask you if, from the appearance of that rock where you saw it in place, it did form in your opinion, part of a ledge?

OBJ.—Mr. WISE. That is objected to, because it is asking for the opinion of a witness instead of for facts, and the opinion of a witness whose examination shows that he is not an expert.

Answer. I could not say if it is a ledge or not. It may be a big slide from the mountain. There may be hundreds of tons slid from the mountain right down to the level ground.

Mr. HEATH:

Question 82. Now, Mr. Wise asks you why Dr. Powell stopped work. Do you know whether Dr. Powell has a title to that land

100 that warrants him to put up improvements to work that land?

Answer. I know he has not.

Question 83. State if you know whether that is one reason why he has not put up proper reduction works, and developed his mine?

Answer. That is one reason.

Question 84. State whether he has not this year worked, both in prospecting and opening his mine?

Answer. He has; and I have helped him work.

Question 85. State whether you have worked upon each forty acres of the hundred and sixty?

Answer. I have.

Question 86. State whether each forty bears quicksilver?

Answer. It does.

101 Recross-examination by Mr. WISE:

Question 87. Why did you not state when I asked you why Powell stopped, that you knew he had no title, and give that as one reason as you did give it, when asked the direct and leading question by the counsel on the other side?

Answer. Because I didn't think about it. I thought that was the reason why that he was not able to proceed.

Question 88. How do you know he has got no title?

Answer. I don't know; only, that I never seen any title or patent for that land.

Question 89. Did he not have as much title when he stopped work, as he did when he commenced work?

102 Answer. I suppose he did.

Question 90. Would not the title be better by his showing that it was mineral land than it would by his stopping work'?

OBJ. (Mr. HEATH).—I object to the question because it is merely asking the opinion of the witness as to a legal proposition.

Answer. He has worked it, and keeps working on it. I helped him to work on it.

Mr. WISE:

Question 91. Didn't you say that he stopped working because his title to that land was not sufficient to justify him in putting up works?

Answer. I did; but it might not justify him to put up retorts before he would have a good title for the land—a patent.

103 Question 92. The last question I asked you, which you did not answer, was whether his title would not better by working it, to show that it was valuable mineral land—if you know.

(The same objection.)

Answer. He does keep working it; but not as much as he would, I suppose, if he had a good title, so that he might be justified in building retorts.

Reading and signing of deposition waived by consent of counsel. See stipulation, page 25.

104 *Deposition of Jonathan Donner.*

Examination-in-chief of JONATHAN DONNER, by Mr. HEATH:

Question 1. State your name, age, residence, and occupation.

Answer. Name, Jonathan Donner; age, twenty-six; place of residence, Contra Costa County, near Clayton; occupation, farming and mining.

Question 2. How long have you been a miner?

Answer. About five years since I have been interested in mining.

Question 3. Have you worked the five years in mining?

Answer. A part of the time; not all the time.

Question 4. What portion of the last five years have you worked as a miner?

105 Answer. O, I suppose about—well, about a month in each year; averaged about a month in each year.

Question 5. What kind of mining?
Answer. Prospecting for quicksilver.
Question 6. Where?
Answer. Mount Diablo district.
Question 7. Do you know the northeast quarter of section 29, in township 1 north, range 1 east, Mount Diablo meridian?
Answer. Yes, sir.
Question 8. How long have you known that land?
Answer. About since 1868.
Question 9. What is the topography of the land, the surface?
Answer. It is hilly, rocky, brushy.
106 Question 10. Does the land contain mineral?
Answer. Yes, sir.
Question 11. What mineral?
Answer. Cinnabar.
Question 12. Have you worked upon the land?
Answer. No, sir.
Question 13. Upon what portion of the land have you seen that cinnabar?
Answer. Well, I seen it pretty much all over it in different places, particularly on the southern portion of it.
Question 14. State whether you have seen and examined the rock in an open cut in that place?
Answer. Yes, sir; I have.
Question 15. Describe that open cut and what it contains?
107 Answer. Well, it contains rock and dirt.
Question 16. Well, as to cinnabar?
Answer. The dirt contains cinnabar. It has been taken out of that, and the rock contains cinnabar that comes from this open cut.
Question 17. Did you ever prospect it with a pan?
Answer. Yes, sir.
Question 18. State whether the prospects are good; whether it is rich in cinnabar?
Answer. Well, I should think the prospects are good. I should judge so from my knowledge of it.
OBJ. (MR. WISE.) I object to all this, as the witness does not show that he is competent to testify.

MR. HEATH:
108 Question 19. Are you familiar with mining for quicksilver?
Answer. Only in that district.
Question 20. Are you in this district? I don't care where.
Answer. Yes, sir; I am in this district.
Question 21. How long have you been familiar with mining for quicksilver?
Answer. About five years.
Question 22. Now, then, I will ask you whether the rock and dirt taken out of that open cut is rich or not in quicksilver?
(OBJ.—The same objection.)
Answer. Well, it contains quicksilver. I don't know the richness of it. I never had it assayed.
Question 23. You say that you have farmed. Where have you farmed?
109 Answer. Farmed in Contra Costa County.
Question 24. Have you been frequently over this land?
Answer. Yes, sir.

Question 25. State the kind of vegetation that grows upon it, and the extent of that vegetation,

Answer. Well, there is squirrel grass grows on it, brush, and chaparral on portions of it.

Question 26. Well, the extent?

Answer. What do you mean; the amount of grass that grows on it?

Question 27. Yes; I mean whether it is good for anything or not.

Answer. No; the grass isn't good for anything to any amount. It good what there is of it, but there isn't enough of it to amount to anything.

110 Cross-examination by Mr. WISE:

Question 28. Where did you farm?

Answer. In Pacheco Valley.

Question 29. Did you farm for yourself?

Answer. Yes, sir.

Question 30. How much land?

Answer. I farmed last year, two of us, about twelve hundred acres.

Question 31. The last year the only year that you ever farmed for yourself?

Answer. No, sir.

Question 32. What other years have you farmed for yourself?

Answer. I have farmed the last four years for myself.

111 Question 33. Are you farming yourself this year?

Answer. Yes, sir.

Question 34. You state that you have been a miner. Where did you mine?

Answer. I mined in Mount Diablo district.

Question 35. Is that all the mining you ever did?

Answer. Yes, sir.

Question 36. How long since you first commenced mining?

Answer. Well, I think about 1872 was when I first begun; along there somewhere.

Question 37. What do you call mining; prospecting or what?

Answer. Well, prospecting; digging a hole in the ground, as the saying is.

112 Question 38. Were you prospecting for the purpose of finding ore in deposits, or for the purpose of taking it out?

Answer. For the purpose of finding it, and taking it out whenever we could get any.

Question 39. Were you ever engaged in mining—that is, taking out ore for commercial purposes—taking it out for the purpose of selling?

Answer. No, sir.

Question 40. Where did you ever prospect there?

Answer. In Mount Diablo district.

Question 41. Upon what land, I mean?

Answer. Well, in section 29.

Question 42. On the land occupied by Mr. Powell?

Answer. No, sir; on another portion of the section.

113 Question 43. On what land was it?

Answer. On the forty acres in the southeast quarter. It is the quarter section south of Powell's; but in that section where his is.

Question 44. Did you ever mine or prospect at all on this land that Powell claims?

Answer. Yes, sir. I have prospected it over the surface.

Question 45. That is the land in dispute in this action?

Answer. I believe so; the northeast quarter.
Question 46. What did you ever find on that land?
Answer. I found cinnabar there.
Question 47. How much?
114 Answer. I don't know how much. I never retorted it.
Question 48. How many tons or pounds or hundred-weight do you suppose you ever found there?
Answer. I don't know how many hundred.
Question 49. Was it as much as a ton?
Answer. No, sir.
Question 50. Was it as much as a hundred pounds?
Answer. No, sir; I never took out a hundred pounds of rock on that place.
Question 51. Was it as much as ten pounds?
Answer. No, sir.
Question 52. As much as one pound?
Answer. Yes.
115 Question 53. Did you find it in the shape of loose rocks, or how did you find it?
Answer. I found it in loose rocks and in the dirt.
Question 54. Mr. Donner, what is your understanding of what cinnabar is?
Answer. Well, it is a combination of mercury and sulphur—quicksilver and sulphur.
Question 55. That is what cinnabar is?
Answer. That is two of the proportions. I don't know whether there are any more or not. I never knew of any more. There may be other ingredients, but that is the principal.
Question 56. You never had any mining experience at all except up in this neighborhood?
Answer. No, sir; not quicksilver mining.
116 Question 57. Were you ever educated at all in mineralogy?
Answer. No, sir.
Question 58. You never studied it?
Answer. No, sir.
Question 59. Do you know, from experience or theory, the character of land in which cinnabar or quicksilver is usually found, and the character of metals it is usually found with?
Answer. No, sir.
Question 60. How long have you known what we call the Mount Diablo district?
Answer. Since 1868.
Question 61. Do you know whether during that time there has been any mine worked profitably in that district?
Answer. No, sir; I do not.
117 Question 62. Don't you know that they are all regarded in the neighborhood as unprofitable?
(OBJ.—Objected to as immaterial.)
Answer. No, sir; I do not.

Mr. HEATH:

Question 63. You say you found cinnabar in prospecting upon this land. Did you prospect with a pan?
Answer. Yes, sir.
Question 64. Is that the only kind of prospecting that you did?
Answer. Yes, sir.

Mr. WISE:

Question 65. Why do you prospect with a pan to find cinnabar?

Answer. Well, the cinnabar will decompose and form in the dirt, and by panning it you find it. You don't find quicksilver often in the
118 dirt; sometimes you do; but cinnabar you find in the dirt, the same as gold.

Question 66. It is a fluid, is it not?

Answer. No, sir; it is a solid.

Question 67. Solid rock?

Answer. No, sir; solid cinnabar, mercury and sulphur together forms a solid and becomes cinnabar. It is in small red chunks.

Question 68. Hard red chunks?

Answer. Not very hard. Some of it you can pulverize with your hands.

(Signature waived. See stipulation, page 25.)

Here a continuance is taken until to-morrow 28th instant, at nine o'clock, a. m.

119 THURSDAY, *June* 28, 1877.

Present: Mr. Heath, of counsel for complainants, and Mr. Wise, of counsel for defendant, Charles McLaughlin.

Deposition of John H. Welch.

Examination-in-chief of JOHN H. WELCH.

By Mr. HEATH:

Question 1. State you name, age, residence, and occupation.

Answer. Name, John H. Welch; age, fifty-five; place of residence, Clayton, Contra Costa County; occupation, I am a mason by trade.

Question 2. What experience, if any, have you had as a miner?

Answer. Well, I have had considerable around Mount Diablo, and other places.

120 Question 3. For how many years?

Answer. Since 1862.

Question 4. State what your experience has been.

Answer. I don't know as I understand what you mean.

Question 5. I mean whether you have worked, and how much you have worked, and everything about it. State what your experience has been.

Answer. Well, I have run a good many prospect holes, and some tunnels around Mount Diablo, and I have worked in gold mines in El Dorado County, and some in Oregon, and some in Shasta County, California.

Question 6. What has your experience been in quicksilver mining?

Answer. That has all been at Mount Diablo, sir. I should think
121 in that length of time I have put in betwixt two and three years at Mount Diablo.

Question 7. State whether you have been engaged or interested in a mine that reduced ore.

Answer. Yes, sir.

Question 8. Do you know the northeast quarter of section 29, in township 1 north, of range 1 east, Mount Diablo base and meridian?

Answer. I do.

Question 9. Do you know the boundaries?

Answer. I do sir, I helped survey it.

Question 10. Describe the topography of that land; the surface.

Answer. There is a part of it chaparral, and part of it hilly land. It all lays on quite a slope.

122 Question 11. State whether or not that quarter-section of land contains mineral.

Answer. Yes, sir; it does.

Question 12. What kind of mineral?

Answer. Well, cinnabar, principally, I think.

Question 13. Have you examined the land with a view of ascertaining the extent of its mineral deposits?

Answer. I have; yes.

Question 14. You say you have mined two or three years in Mount Diablo?

Answer. Yes, sir.

Question 15. What did you mine for?

Answer. Well, I mined for copper and quicksilver.

123 Question 16. State whether you found deposits of quicksilver there.

Answer. I did.

Question 17. Are you familiar with quicksilver mines?

Answer. I am now, but I was not at that time. I am, so far as that mine is concerned.

Question 18. While prospecting for mineral did you find quicksilver in that region?

Answer. Yes, sir; I can find it any time in that gulch.

Question 19. Did you find it there?

Answer. On that quarter-section? Yes, sir.

Question 20. How long ago did you first become familiar with quicksilver or cinnabar ore?

Answer. In 1862.

124 Question 21. Have you been familiar with it ever since?

Answer. Yes, sir.

Question 22. Mr. Welch, state the quantity or extent of quicksilver deposits, from your examination of the northeast quarter of that section.

Answer. The extent seemed to be scattered over the piece—more in one corner than all the rest.

Question 23. Do I understand you to say that you found quicksilver upon all parts of the quarter-section?

Answer. I did, sir; that is, by "all parts" you mean each forty acres?

Question 24. Yes, sir.

Answer. Yes, sir.

Question 25. Describe how it lays upon the land in all parts.

Answer. Well, it lays in the dirt and in the rocks; some large

125 rocks and some small rocks. There are some of the rocks, maybe, that would weigh twenty ton—thirty ton.

Question 26. From the appearance of those large and small rocks, state whether it would pay to reduce them.

(Question objected to, and withdrawn.)

Question 27. You say you are interested in a mine that reduced rocks there?

Answer. Yes, sir.

Question 28. How much ore was reduced in the mine that you were engaged in?

Answer. During the time Mr. Oglesby worked there, he testified here in an affidavit that he took out ten thousand dollars.

126 Question 29. Were you frequently at the mine, and saw the rock that was reduced?

Answer. Yes, sir. I worked there some.

Question 30. Now, then, I will renew the question. State, from the general appearance of the rocks and dirt there, whether it contains sufficient quicksilver to pay for reducing the same.

(OBJ.—MR. WISE. I object to that, because the witness has not shown that he has sufficient information to enable him to testify; does not show that he is an expert; and it is not competent testimony.)

Answer. Well, that general term there I don't know how to put that in; but there is a part of it that I saw that think would.

MR. HEATH:

Question 31. Have you seen any portion of the surface dirt worked on the land adjoining this?

127 (OBJ.—Objected to as irrelevant and immaterial.)

Answer. I have seen it made into adobes—kind of a brick shape.

Question 32. How does the earth so worked into brick shape correspond with the surface of the land in controversy?

Answer. Well, it is nearly the same dirt, as near as I can judge from the top and by panning.

Question 33. Have you seen the land in controversy prospected, or prospect holes upon the same?

Answer. Yes, sir.

Question 34. How deep were those holes; how deep down from the surface?

Answer. Well, there are different holes and different depths; some of them ten feet; some of them four or five; and there is an open

128 cut and a *a* tunnel. I don't know how many there is altogether.

Question 35. Quite a number?

Answer. Yes, sir.

Question 36. At the bottom of the deepest holes—eight or ten feet—what was the character of the earth as to its containing quicksilver?

(Objected to, and withdrawn.)

Question 37. Did you examine the prospect holes, with reference to the mineral that might be contained therein?

Answer. Some of them I did; yes, sir.

Question 38. Now state whether the quicksilver continued to the bottom of the holes.

(OBJ.—Objected to on the ground that witness does not show that he knows, or is competent to testify.)

129 Answer. Yes, sir; them that I examined it did.

Question 39. Mr. Welch, describe the open cut referred to and the tunnel.

Answer. Well, the open cut I referred to is in the ravine below, not a great ways from where the furnace is.

MR. WISE:

Question 40. Is it on this land?

Answer. Yes, sir.

MR. HEATH:

Question 41. State what you found in the open cut.

Answer. Well, in that open cut there was a great deal of very good rock and some good dirt.

Question 42. When you say "rock" what do you mean; quicksilver rock, or what?

Answer. That is what we call quicksilver quartz; rock containing quicksilver.

130 Question 43. The dirt also containing quicksilver?

Answer. Yes, sir.

Question 44. Did you see the end where he stopped work?

Answer. I did.

Question 45. State whether that was what is termed a quicksilver ledge.

OBJ. (Mr. WISE).—That is objected to as leading, and also on the ground that the witness has not shown that he knows what a ledge is, or is competent to testify.

Answer. I never saw a real quicksilver ledge that I was certain was a quicksilver ledge, and I could not say that that was one.

Mr. HEATH:

Question 46. Describe the cut, the appearance of the face of it,

131 and the kind of rock that was taken out of the cut and tunnel.

Answer. That cut, the face of it was mixed with rocks of different sizes—of nearly all sizes—and dirt. Nearly all the rock was quicksilver rock. There might have been some other rock mixed with it.

Question 47. How long was that open cut and tunnel?

Answer. They are not together.

Question 48. How long was the open cut?

Answer. I don't know. I never measured it.

Question 49. As near you can get at it.

Answer. I should think it was pretty near a hundred feet; I am not certain.

Question 50. How long was the tunnel?

Answer. I think that is about thirty or forty feet. I never measured either one of them.

132 Question 51. What was the character of the rock taken out of the tunnel and the face of the rock in the tunnel; was it quicksilver rock?

(OBJ.—Objected to on the ground that witness has not shown that he is competent to testify as an expert.)

Answer. The tunnel is run in rather a hard, flinty rock. It is the same way all the way.

Question 52. State whether that flinty rock contained quicksilver.

(OBJ.—The same objection.)

Answer. Very little in that rock, I think.

Question 53. Where was that tunnel?

Answer. I should think it was near the center of the claim; I

133 won't be positive. I could not tell which piece it is on exactly. I know the outside boundaries, but I don't know the center.

Question 54. What experience have you had as a mineralogist?

Answer. Well, I never had a great deal; I have read mineralogy a little.

Question 55. Have you reduced quicksilver rock?

Answer. Yes, sir.

Question 56. What are the general characteristics of quicksilver rock?

(OBJ.—The same objection.)

Answer. Well, the rock there——

Question 57. (Interrupting.) I mean the general characteristics of quicksilver rock?

Answer. That is all the place I know of. The general character
134 of the rock there is a kind of a gray and white rock mixed together; very hard, some of it, and some of it is very soft. But that that is so soft is a different kind of rock.

Question 58. When did you first reduce quicksilver rock at Mount Diablo district?

Answer. In 1862.

Question 59. How frequently have you reduced it since?

Answer. O, I don't know. I have been tinkering along with it ever since.

Question 60. Frequently ever since?

Answer. Yes, sir.

Question 61. Have you worked any for Dr. Powell upon this land?

Answer. I have.

135 Question 62. How deep have you dug when you were working for him?

Answer. I worked in two different holes for him. One, I guess, was about eight feet deep, and the other about six. Three holes.

Question 63. Did you strike the bed-rock in either one of the holes?

Answer. In one of them, yes; what we term bed-rock; you might not call it bed-rock; we call it slate with us.

Question 64. What did the earth contain from the surface down to the bottom of those holes?

Answer. It contained some quicksilver in the dirt and small rock.

Question 65. Mr. Welch, I understood you to say that there was more or less quicksilver upon all of this land—the whole hundred and sixty.

Answer. Yes, sir.

136 Question 66. Who occupies the northeast quarter?

Answer. Dr. Powell, I believe. He lives there.

Question 67. Since when did Dr. Powell occupy the land?

Answer. The first I knew of it was in 1866.

Question 68. At that time, in 1866, what improvements, if any, did he have on the land?

(OBJ.—Objected to as irrelevant and immaterial.)

Question 69. I will change the question. What improvements, if any, has he now, at the present time, on the land?

(OBJ.—The same objection.)

137 Answer. Well, he has got a house and a barn, and a small piece fenced in with a brush fence, besides the mining improvements that he has.

Question 70. State whether there are any reduction works upon this land.

(The same objection.)

Answer. There is.

Question 71. When were those reduction works erected?

Answer. The first ones that was erected on the same locality was erected, I think, in 1864; the latter part of 1863 or 1864. I am positive.

Question 72. This open cut that you speak of as upon the land, in what direction from the reduction works is it?

Answer. Due east.

Question 73. How far?

138 Answer. About two hundred feet, I should think; two or three hundred feet.

Question 74. State what mining was done by Dr. Powell upon that land about the years 1866 and 1867.

(Question objected to and withdrawn.)

Question 75. You state that Dr. Powell has occupied the land sinc 1866. Do you know what work he did upon that land during th years 1866 and 1867?

Answer. I don't think he done any mining.

Question 76. The same question as to 1868 or 1869?

Answer. Well, I don't know of any. In '68 and '69 I was not there.

Question 77. Do you know of his doing any mining at all upon the land?

139 Answer. Yes; since 1870.

Question 78. What years do you know of his mining the land?

Answer. I think it was 1870 or '71, the first that I knew anything about it.

Question 79. What did that mining consist of?

Answer. There was some of these holes and cuts that he run; part of them then and part of them since; and some of them has been run farther now than they was then.

Question 80. Do you claim any works near that land, or any mines?

Answer. I do.

Question 81. How near?

Answer. Well, it joins it.

140 Question 82. State the value of that land per acre for mining purposes.

(OBJ.—Objected to on the ground that the witness does not show that he knows or is competent to testify; and further, that it is immaterial and irrelevant to this question.)

Answer. I don't think I could do that. I have no way of ascertaining the value.

Question 83. State if you know the value of the land for agricultural and grazing purposes.

Answer. Well, I don't know. Every one have their notion about the valuation of land that way. There is no land of that description sold. Still, I would not give but very little for it. I don't know as I would want it.

141 Question 84. Which is that land more valuable for; agricultural or mining purposes?

(OBJ.—Objected to on the ground that the witness does not show that he is competent to testify.)

Answer. Well, I should think it was worth more for mining, if it is worth anything at all. That is my opinion.

Cross-examination by Mr. WISE:

Question 85. Mr. Welch, are you the one that the Welch mine is named after?

Answer. I believe I am; yes.

Question 86. You once owned it?

142 Answer. Yes, sir; I once owned it. I located it in the first place.

Question 87. Do you own it now?

Answer. I have a claim there; yes, sir.

Question 88. You have a claim there or an interest in it?

Answer. I claim the Welch mine.
Question 89. Do you own the Welch mine now?
Answer. No, sir.
Question 90. Who does?
Answer. Mr. Phillips I believe is boss of it.
Question 91. Did you ever run it?
Answer. Yes, sir.
Question 92. How long did you work it?
Answer. Well, I had charge of it I guess eight or nine months.
143 Question 93. During that time that you worked the Welch mine, did it pay for the expenses that you paid out?
Answer. We were not reducing rock for quicksilver, we were sinking shafts and getting ready.
Question 94. So that you could not say anything as to whether or not it paid?
Answer. No, sir.
Question 95. Did you ever have any education as *as* a mineralogist or miner?
Answer. No; I have some mineral books.
Question 96. All you know you have picked up from your own reading?
Answer. Yes, sir.
Question 97. Did you ever have any experience as a miner anywhere else except in Mount Diablo district?
144 Answer. Yes, sir; in Nevada, and El Dorado, and Oregon.
Question 98. When you mined in Nevada, and El Dorado, and Oregon, was it for quicksilver, or what was it for?
Answer. For gold.
Question 99. How much experience did you have in Nevada, and El Dorado, and Oregon; how long an experience?
Answer. I spent about two years and a half at it.
Question 100. In the three places?
Answer. Yes, sir.
Question 101. Does the experience that a man gets in Nevada, and El Dorado, and Oregon, in mining for gold and other metals become of any use to him in mining for quicksilver?
Answer. Yes, sir; I think it is of some use to him.
145 Question 102. A man knows how to mine for gold, how much advantage is it to him when he goes to mining for quicksilver?
Answer. He knows how to trace ledges and the lay of the country.
Question 103. Then a man who is competent to trace a gold-bearing ledge is competent to trace a quicksilver ledge?
Answer. Yes, sir; or coal even.
Question 104. How many ledges did you ever trace?
Answer. Well, I never kept any account of it; I have been after a good many.
Question 105. Did you ever trace a quicksilver ledge, or see one?
Answer. Yes, sir.
Question 106. Where?
146 Answer. Up there.
Question 107. A quicksilver ledge up there?
Answer. What we took to be a ledge; yes, sir.
Question 108. Can you tell what a ledge is?
Answer. A ledge is rock in place, I suppose, rock that is together, not thrown about. That is what I understand by a ledge.
Question 109. On this land in question here have you found any quicksilver ledge?

Answer. No, sir.

Question 110. What is the origin of the quicksilver that you suppose you saw on this land; is it impregnation, or is it infiltration, or what is it?

Answer. It is formation, I should think.

Question 111. What do you mean by formation?

147 Answer. Well, formed, the same as anything else is formed. Sometimes lime is formed by water.

Question 112. Does it bear evidence of having been washed or floated from a ledge, or bear evidence of being formed on the ground?

Answer. It looks like it may have been formed on the ground more than from a ledge.

Question 113. It looks like it may have been formed on this ground?

Answer. Yes, sir.

Question 114. Do you know what an infiltration is?

Answer. I don't know as I do.

Question 115. Do you know what an impregnation is?

Answer. Yes, sir.

148 Question 116. What is an impregnation?

Answer. Impregnation is something mixed with another—impregnated with a mineral or other substance.

Question 117. I am speaking of it now as a mining term. Do you know what it is?

Answer. Yes, sir. It is rock, I suppose, impregnated by impregnation.

Question 118. That is what you call an impregnation?

Answer. Yes, sir; that is what I understand by it.

Question 119. You say you were in a mine that reduced quicksilver ore. What mine was that?

Answer. That was the Welch mine.

Question 120. You were not running it then when it reduced ore, were you?

Answer. No, sir.

Question 121. Who was running it?

149 Answer. Oglesby was superintendent.

Question 122. How long a time was it reducing ore?

Answer. I don't know. I think about a year, at that time.

Question 123. How many men were at work on it at that time?

Answer. Well, they varied a good deal. Sometimes there was ten or twelve, and sometimes there was as high as thirty.

Question 124. Do you know the quantity of quicksilver that was disposed of from that mine during that time?

Answer. No; only by Mr. Oglesby's testimony.

Question 125. Mr. Oglesby stopped working it, did he not?

Answer. Yes, sir.

Question 126. Why? Do you know?

150 Answer. That is more than I can tell.

Question 127. Don't you know that it was because it did not pay?

(OBJ.—MR. HEATH. I object to that. He says he don't know.)

Answer. No, sir; I don't know that it was because it did not pay.

MR. WISE:

Question 128. Don't you know that at the time Mr. Oglesby was working that mine he could not pay the men, and was compelled to stop?

(OBJ.—Mr. HEATH. I object to that as immaterial, and he has already stated that he knows nothing about it.)

Answer. No, sir; I do not know that.

Mr. WISE:

Question 129. Did you testify in the case in the land-office in
151 regard to Marsh's claim, or some other claim there?

(OBJ.—Objected to as irrelevant and immaterial.)

Answer. I think not.

Question 130. After Mr. Oglesby stopped working that mine who worked it next?

Answer. I worked it next.

Question 131. How long did it lie idle after he stopped working it?

Answer. About five years, I think.

Question 132. When did you first commence working it?

Answer. In 1871.

Question 133. Did you work the ore?

Answer. No, sir; only to assay it.

152 Question 134. How long did you work it?

Answer. About three years.

Question 135. During that time did you make any reduction?

Answer. No, sir.

Question 136. When did you stop it?

Answer. In 1874, I think.

Question 137. How long did it lie idle then?

Answer. It has been idle off and on since then. I don't know how much.

Question 138. Who has been working it since then?

Answer. Mr. Phillips.

Question 139. You say you helped survey this land. In what year was that?

Answer. Well, we surveyed a part of it in 1871. We got a
153 surveyor up there—Mr. Thompson—and had the lines run on one side of it, and they were before run on the other side. The north part of it was already surveyed.

Question 140. This land now in controversy—the hill is considerably above it, is it not?

Answer. What hill?

Question 141. This is on a slope on the side of a hill, is it not?

Answer. Yes, sir. It is all a slope. Some slopes one way and some another.

Question 142. Is there a hill above this land?

Answer. There is a hill there; yes, sir. Mount Diablo is not a great ways off.

Question 143. How far is Monte Diablo from it?

Answer. The top of the mountain—I think it is about three miles from this land.

154 Question 144. The closest hill to it—how high is it; above it?

Answer. I never measured it.

Question 145. How high, as near as you can estimate?

Answer. It might be, by going back far enough—that is a very nice point, you know, because I don't know where you are reckoning from. If you go back far enough, it will be three thousand feet; but in measuring from a nearer point, it would not be so much.

Question 146. It goes from three thousand feet down to what?

Answer. Down to the land.

Question 147. You say that all over this quarter section there is mineral—cinnabar particularly?

Answer. Yes, sir.

155 Question 148. How do you find the mineral?

Answer. Well, in the rocks; some big ones and some little ones, and some dirt. Where you do not find rock, if the ground looks favorable, you take a pan and pan it.

Question 149. You mean to say that almost all over this quarter section you can find some traces of metal?

Answer. Yes, sir.

Question 150. Did you ever find any metal in any quantities on this quarter section that would pay for working?

Answer. Yes, sir, some. I think it would pay. I don't know as it would.

Question 151. How much?

Answer. Well, I could not say.

Question 152. How many places?

156 Answer. Well, I don't know. There are two of the best places I know of.

Question 153. Whereabouts are they?

Answer. They are on the southeast quarter, I think.

Question 154. All over this quarter section, and all around the neighborhood there, there are a great many little prospecting holes dug, are there not?

Answer. Yes; a good many.

Question 155. Most of them have been abandoned, have they not?

Answer. Yes, sir; a great many of them have been abandoned.

Question 156. When did they first commence prospecting for metals in that section of the country?

Answer. I don't know exactly; it was a good while ago, though.

157 Question 157. When, as near as you can remember?

Answer. It must have been before 1860, anyhow, or about 1860, I should think.

Question. And they have been prospecting there ever since; digging little holes and leaving them?

Answer. Little holes and big holes.

Question 159. And then leaving them?

Answer. Some of them have been left.

Question 160. There has been no place where they pretended to do work systematically, for the purpose of taking out quicksilver, except at the Welch mine?

Answer. O, yes, sir.

Question 161. Where?

158 Answer. There is another company working at another place.

Question 162. What company is that?

Answer. It is called the Wolf Company.

Question 163. Those companies are the only ones that ever pretended to do any work of reducing the rock?

Answer. Yes, sir. They have not reduced any yet, only to make an assay.

Question 164. You are considered quite an expert in that neighborhood among the men there, are you not?

Answer. I don't know about that.

Question 165. Well, your opinion is sought for by those interested in mining around in that neighborhood, is it not?

Answer. I don't know as it is any more than anybody else's.

Question 166. Are you not consulted by the neighbors about digging tunnels, &c.?

159 (OBJ.—Objected to as immaterial.)

Answer. No, sir; I don't know as I am.

Question 167. You do not claim, then, to be an expert?

Answer. No, sir.

Question 168. You say you have mined for copper in that section of the country?

(OBJ.—Objected to as immaterial.)

Answer. Yes, sir.

Question 169. Did you find any copper on this land?

Answer. Some traces of it; yes, sir.

Question 170. Did you find any copper on the other land—on any other land in the neighborhood?

(OBJ.—The same objection.)

160 Answer. Yes, sir.

Question 171. In quantities that would pay for working it?

(OBJ.—The same objection.)

Answer. No, sir; I could not say as I did.

Question 172. Have you leased the Welch quicksilver mine to the parties who are at present running it?

(OBJ.—The same objection.)

Answer. No, sir.

Question 173. On what terms are they working it?

(OBJ.—The same objection.)

Answer. They ain't working it on any terms at all. They

161 jumped it from me.

Question 174. You say that you found quicksilver in the dirt and in rocks, some large and some small?

Answer. Yes, sir.

Question 175. In what shape do you find quicksilver in the dirt, in the natural state or in the form of cinnabar?

Answer. Little red particles.

Question 176. Is that natural to the soil, or has that been broken off or washed from rocks or ledges somewhere?

Answer. That I don't pretend to know. My theory is that it is decomposed rock.

Question 177. The rocks that you find, some large and some small, do they or not bear evidence that they have been broken from other rocks and washed down there?

162 Answer. No; I could not say they did. They don't show any straight seams where it has been broken. If the rock had been broken from other rock, they would show where they had been broken off. These don't show that.

Question 178. Do they look like boulders?

Answer. More like boulders; yes, sir.

Question 179. Are they not small?

Answer. Not very small.

Question 180. They do not bear any evidence of having been fixed to any other rock?

Answer. No; I don't think they do.

Question 181. Some are large and some small?

Answer. Yes, sir.

Question 182. Do those large ones contain as much metal in

163 proportion as the small ones?

Answer. Some parts of them. One side of a rock may be good, and the other not good for anything.

Question 183. You say during Oglesby's time he took out ten thousand dollars' worth of minerals?

Answer. That is what he said; yes, sir.

Question 184. You only know from his testimony?

Answer. Yes, sir.

(*Motion to strike out.*—Mr. Wise. I move to strike out what the witness has said with regard to the taking out of ten thousand dollars, because it is hearsay.)

Question 185. You say that the Welch mine—they have jumped it from you?

(OBJ.—Objected to as irrelevant.)

164 Answer. Yes, sir.

Question 186. You have a mining district there?

Answer. Yes, sir.

Question 187. Did they jump it from you because it had not been worked?

(OBJ.—The same objection.)

Answer. I don't know what reason they took for jumping it. I could not say.

Question 188. How long since they jumped it?

(OBJ.—The same objection.)

Answer. About two years.

Question 189. Have you any other mine up there but that Welch mine?

165 Answer. I am interested in this Wolf claim.

Question 190. You say that the land in controversy has smelting-works on it?

Answer. Yes, sir.

Question 191. To whom do those smelting-works belong?

Answer. Now you have got me. I don't know.

Question 192. They do not belong to Powell, do they?

Answer. I don't know but they might. I don't know as they do.

Question 193. Who uses them?

Answer. Nobody uses them now.

Question 194. Who claims them?

Answer. I don't know. I could only make that statement by hearsay.

Question 195. Who put them up?

166 Answer. Mr. Phillips put them up—some of them—put up the furnaces.

Question 196. Were they put up for the purpose of being used on cinnabar taken from the Welch mine?

Answer. Yes, sir; what they call the Welch Consolidated.

Question 197. And the Welch Consolidated is on other land than this in controversy?

Answer. Yes; some of it is, and some of it isn't. The Welch Consolidated runs across a corner of this land.

Question 198. The part where they have taken out any rock from the Welch Consolidated is not on this land, is it?

Answer. No, sir.

Question 199. So that the part that runs across this corner

167 they don't know what it is; don't know whether it has any rock in it or not?

Answer. Well, I don't know whether they know it or not. I don't know. They may know more than I do.

Question 200. You say that the tunnels that were run on this land were through flinty, hard rock, all the way.

Answer. I did not say tunnels; I said tunnel.

Question 201. Very well. The tunnel that was run was through flinty, hard rock, all the way?

Answer. Yes, sir.

Question 202. Do you mean to say that that rock was flint, or do you use the word "flinty" to indicate hardness?

Answer. I don't say it is really flint, but it is bordering on
168 flint. It is a very hard rock that would strike fire nearly equal to flint.

Question 203. Is it a continuous mass of rock, or is it chippy?

Answer. It is rather shelly; yes, sir; small seams between it. It is not a smooth rock.

Question 204. But the pieces themselves are very solid?

Answer. Yes, sir; very hard.

Question 205. What is the color of it?

Answer. The colors are mixed. Generally it is white and kind of a mixed dead red.

Question 206. Is that dead red as hard as the other?

Answer. Yes, sir; about the same.

Question 207. Did you not see as much evidences of cinnabar where this tunnel was as anywhere around the place?

169 Answer. No.

Question 208. Where did you see the most evidences of cinnabar?

Answer. In this cut they have been speaking about.

Question 209. More than you found in the tunnel?

Answer. Yes, sir.

Question 210. Is it the same character of land where the cut is as where the tunnel is?

Answer. I don't see but very little difference.

Question 211. Is that hard and flinty, too—the rock?

Answer. Yes, sir; it is of nearly the same hardness, but there don't seem to be so much flint.

170 Question 212. The whole basis of this land is hard and rocky, is it not? There is very little soil on it, and under that you soon come down to rock?

Answer. Yes, sir; to what they call slate. There is very little soil on it.

Question 213. It is most of it this hard rock?

Answer. No; the slate isn't.

Question 214. How much of this land in controversy is slate, and how much of it is this flint that you speak of?

Answer. I could not tell, because this slate is not always exposed, and you can't always tell where it is.

Question 215. As near as you know, what proportion would it bear to the whole? Is the greater proportion flint, in your judgment, or the greater portion of it slate?

171 Answer. That is a nice thing to determine where you can't see it.

Question 216. If you know, say; and if you don't know, say so.

Answer. Well, I don't know.

Question 217. This slate that you speak of—does that contain quicksilver?

Answer. Well, I don't know as it does.

Question 218. You never found any in it?

Answer. No; not in the rock itself. You might find quicksilver in the dirt that is on top of it.

Question 219. After you dug down a little distance, you most always got clear of the dirt, did you not come to a rock?

Answer. I say there is a part of it when you dig down you come to that slate.

Question 220. I mean to say on all of this quarter section that
172 we are speaking of now, after you dig down a little distance you get clear of the dirt and come to the rock?

Answer. You would in some parts of it. The holes that I dug we didn't get through, so I could not tell. The cut was not through.

Question 221. Did you ever in any place there dig down entirely through the dirt and come to the rock?

Answer. O, yes, sir.

Question 222. After you dug down and came to the rock, did you find cinnabar in the rock?

Answer. I never dug down but in one place, and there was none there.

Question 223. So that all the cinnabar that you ever found was mixed with the dirt and rock?

Answer. Yes, sir.

173 Question 224. When did you first know this mining district.

Answer. In 1862. I have been in there a few times before, when they were prospecting in it, but I was not much acquainted until 1862.

Question 225. And you have known it ever since?

Answer. Yes, sir.

Question 226. Since 1862, up to this time, have you ever known any individual or any company or companies to be successful in mining there—make any money?

Answer. I don't know whether they did or not. I did not keep their books, and of course I have no means of knowing.

Question 227. You say that Powell has a house and barn on this land?

174 Answer. Yes, sir.

Question 228. What did he have the barn for?

Answer. I don't know. He built it, thinking he would have some hay, I guess; sometimes he does get a ton or two.

Question 229. On the land?

Answer. Yes, sir.

Question 230. Does he do any farming?

Answer. That is all I know. He would sow a little wheat on the place to get hay. When he does it sometimes the squirrels gets it and he don't get any.

Question 231. If it were not for the squirrels then he would get some?

Answer. Yes, sir; he would get some.

Question 232. You say he has some mining improvements.
175 What do his mining improvements consist of?

Answer. I believe I have described them. They consist of holes, cuts, and tunnel.

Question 233. These reduction works that you say were on the land were claimed by other parties?

Answer. Yes, sir.

Question 234. The mine that you claim adjoining this mine is the Welch mine that you have spoken of?

Answer. Yes, sir; it is now called the Welch consolidated.

Question 235. It is the one which has been spoken of here as the Welch mine?

Answer. Yes, sir; it is all the same piece of ground.

Question 236. What is your business now?

176 Answer. I haven't any business at all. I am staying up there on my claim.

Question 237. What claim?

Answer. On this Wolf claim.

Question 238. How long have you been staying there?

Answer. About a couple of months now. I have been there most of the time during the last two years. Sometimes we will run a tunnel awhile until we get tired, and then we will lay off awhile.

Redirect-examination by Mr. HEATH:

Question 239. State whether the title to that whole region is perfect or in dispute.

177 Answer. I believe there are two or three disputes about that. That forty acres where the retort stands is in dispute.

Question 240. That whole northeast quarter section is in dispute?

Answer. Yes, sir.

Question 241. How long has the title to that northeast quarter of section 29 been in dispute?

Answer. I don't know. I think that dispute arose when I was gone. I think it was in 1868 or '69.

Question 242. And since that time the title has been in dispute?

Answer. I believe so.

Question 243. Mr. Wise asks you whether or not there is a mineral ledge on this land. I will ask you to state whether there is not

178 a high hill running right through the center of this land in dispute?

Answer. Yes, sir; there is a pretty high hill.

Question 244. State whether there is a ravine between Mount Diablo and that hill that runs through the center of this quarter section?

Answer. There are two ravines, and yet there is a back-bone that joins it on to the mountain. Between the reduction works and his claim there is quite a deep ravine.

Q. 245. Would it be possible for cinnabar to come down from Mount Diablo and be deposited on the side of the hill that Dr. Powell's house is on?

(OBJ.—Objected to as incompetent.)

Answer. If the country always had the appearance that it

179 does now it could not.

Question 246. Now I will ask you to state whether you found cinnabar on the slope next to Powell's house?

Answer. Yes, sir.

Question. State whether you found cinnabar on the slope running down from the top of that hill toward the reduction works?

Answer. Yes, sir.

Q. 248. How high is that hill from the valley that the reduction works are in?

Answer. I should think about a hundred feet, the highest point.

Question 249. Now, then, how wide is the ravine between the foot of Mount Diablo at the reduction works and the hill that you have spoken of?

180 Answer. Fifteen or twenty rods, I should think.

Question 250. Then, when you say that the land is sloping land, I understand you to say that the land slopes down toward the reduction works from the top of the hill, and then slopes in the opposite direction; in other words, that it lays in two slopes?

Answer. Yes, sir; two slopes, and the reduction works stands in the center.

Question 251. You say that Mr. Phillips jumped your claim in the Welch mine. State whether you abandoned it, or was forcibly dispossessed?

Answer. Well, he came on there when I was not there one day, and I ordered him off as soon as I found him there, but still he didn't go.

Question 252. Then, I understand you to say that you never
181 did abandon your claim, but that you were absent one day, and he took possession?

Answer. Yes, sir; I was not there the day he came on there.

Question 253. At the time that Mr. Oglesby said that they took out ten thousand dollars' worth, did you see the flasks of quicksilver taken from the mine?

Answer. I frequently saw flasks taken from there, but I could not tell how many.

Question 254. About how many at a time would you see taken?

Answer. I don't recollect; they used to haul with four horses; I don't recollect how many they did haul at a load.

Question 255. Have you seen any of the flasks filled?

Answer. Yes, sir; I helped fill them while I was there.

182 Question 256. You know, then, there was considerable quicksilver taken out of your own knowledge?

Answer. Yes, sir.

Question 257. About how long was Mr. Oglesby reducing the ore at that time?

Answer. I don't think he was quite a year.

Question 258. You say the rock in the tunnel is flinty?

Answer. Yes, sir.

Question 259. That flinty and shelly rock contained quicksilver, more or less, did it not?

Answer. Only a little, that rock, but I have seen good quicksilver in the same kind of rock, close by there.

Question 260. And even in that you say there was a little?

183 Answer. Yes; very little. On our claim we find in that kind of rock.

Question 261. In answer to a question of Mr. Wise's, you stated that all the quicksilver rock you saw was in the dirt. I will ask you if you did not see it also in this tunnel in this rock?

Answer. I say it contains a little quicksilver, but it is not as good rock as the other.

Question 262. In the open cut that you speak of, you also there found it in rock, and not in the dirt?

Answer. Yes; some in the rock, and some in the dirt.

Question 263. Then it is not the fact that all the quicksilver that you saw there was in the dirt?

(OBJ.—Objected to as leading.)

184 Answer. No.

Question 264. You found, then, did you, quicksilver in rock and also in dirt?

(Objected to as leading and argumentative.)

Answer. Yes, sir.

Question 265. On the slope northeast from the reduction works was the quicksilver generally scattered through the dirt the same as on the slope southeast?

Answer. The same, but not as much. More generally in the dirt than in the rock.

Mr. WISE:

Question 266. When, Mr. Welch, did you ever find any quicksilver in any place where you had got entirely clear of the dirt, and it was in the rock? Did you ever?

185 Answer. Oh, yes, sir.

Question 267. On this land?

Answer. Not on that land; no, sir.

Question 268. Whenever you found quicksilver on this land, it was rock, and earth, and quicksilver, and other things mixed?

Answer. Yes, sir.

186 *Deposition of J. Donner.*

JONATHAN DONNER recalled for complainant.

By Mr. HEATH:

Question 1. State whether you took any quicksilver rock, taken from this land in controversy, to San Francisco to be assayed.

Answer. Yes, sir; I did.

Question 2. To whom did you take that rock to be assayed.

Answer. I took it to a man by the name of Strong.

Question 3. Where?

Answer. I don't remember what part of the city. It was in San Francisco, but I don't remember the number nor the street.

187 Question 4. Did you ever take any rock to Mr. Strong to be assayed except what was taken from this land?

Answer. No, sir.

Question 5. Who took out that rock that you took down to be assayed?

Answer. I took it out.

Question 6. From this same land?

Answer. Yes, sir.

Question 7. From one or more places on the land?

Answer. From two places.

Question 8. What year?

Answer. I don't remember the year.

Question 9. About how long ago?

Answer. About three years ago, I think; three or four.

188 Question 10. Then you never took any rock to Strong to be assayed except what you took from this identical land?

Answer. No, sir.

Question 11. What part of the land did you take it from?

Answer. I took it from the side towards the house, and also from the ravine toward the south part.

Question 12. How near the middle of the claim?

Answer. Well, one part came from pretty near the middle of the claim and the other was near the south side.

Question 13. From the place where you took the rock, near the middle of the claim, was there a hill between that and the reduction works?

Answer. Yes, sir.

189 Recross-examination by Mr. WISE:

Question 14. Do you know where Strong is now?

Answer. No, sir; I do not. I never was there but once.

Question 15. Did he give you a written analysis of his assay?

Answer. Yes, sir; he sent us a written analysis; give me his card, and I went home, and then he sent us a written statement afterwards.

Question 16. Have you got it?

Answer. No, sir; I have not.

Question 17. What became of it?

Answer. I don't know.

Question 18. You say you took it from two places, and described the two places. How much like what you took did you find in those two places?

190 Answer. Well, in one place I thought there was in sight five or six ton; and the other place I didn't find a great deal.

Question 19. It is a mere matter of opinion that there was five or six tons there?

Answer. No; I could swear to that, that there was as much as five or six ton of that kind of rock in sight.

Question 20. You don't know that except from your judgment, do you?

Answer. No.

Question 21. You are interested in some claim in that neighborhood, are you not?

(OBJ.—Objected to as irrelevant and not proper cross-examination.)

Answer. Yes, sir.

191 Question 22. You are interested in establishing the mineral character of the land in that neighborhood, are you not?

(OBJ.—Objected to as immaterial.)

Answer. No, sir; only such land as I claim.

Question 23. How many claims have you got.

Answer. One claim.

Question 24. How far from this land?

Answer. Quarter of a mile.

Question 25. How long have you owned it?

(OBJ.—The same objection.)

Answer. Five years, I guess.

Question 26. Have you tried to sell it?

192 Answer. No, sir.

Mr. HEATH:

Question 27. Was the sample that you brought down to be assayed, a fair average of the balance that you saw there?

Answer. Yes, sir; it was.

Question 28. Is there anybody contesting your right to that claim of yours?

(OBJ.—Objected to as immaterial.)

Answer. No, sir.

Mr. WISE:

Question 29. In what section and quarter section is your claim?

Answer. It is forty acres of the southeast quarter of the same section.

193 *Deposition of Richard Taylor.*

Examination-in-chief of RICHARD TAYLOR, by Mr. HEATH:

Question 1. State your name, age, residence and occupation.

Answer. Name, Richard Taylor; age, about forty; place of residence, here in the city, at the present time; occupation, mining.

Question 2. How long have you been a miner?

Answer. Ever since a boy. About thirty years; since I was ten years old.

Question 3. In what mineral have you mined?

Answer. In all classes, I believe, pretty much, that is, copper and tin, and coal and quicksilver, and gold and silver ores.

194 Question 4. Where have you mined for quicksilver?

Answer. Well, I was in New Almaden here, for three or four years.

Question 5. Where else?

Answer. I found the St. John's mine over here at Vallejo. I was there and struck it, and was foreman of it for a good bit.

Question 6. Anywhere else in quicksilver?

Answer. I have been in several places; in the Guadaloupe, and ever so many places that is working now.

Question 7. What others have you examined?

Answer. I have been at the New Idria mines and examined them.

Question 8. When did you first become familiar with and have experience in quicksilver mining?

195 Answer. It is about twelve years ago.

Question 9. Of the twelve years, what proportion have you actually mined for quicksilver?

Answer. About half the time; about six years; full that.

Question 10. Are you acquainted with the land occupied by Dr. Powell, near Mount Diablo, or at Mount Diablo?

Answer. I am, sir. I have been there twice. I was sent over there to look at property there, this Welch mine. I examined that, and then I looked over the rest, several other places there. I was sent over there by some parties here in the city.

Question 11. What portion of the northeast quarter of section 29, township 1 north, of range 1 east, did you examine?

196 Answer. The vein runs across there.

Question 12. What examination did you make; the whole land?

Answer. Yes, sir. I looked all around there.

Question 13. The second time that you went there, did you make an examination?

Answer. Yes, sir; I looked all round there, and in different other places.

Question 14. When did you make the first examination?

Answer. I was there about two years and a half ago.

Question 15. When did you make the second?

Answer. I went there about three or four months afterwards. I couldn't tell exactly.

197 Question 16. Describe the mineral character of that land.

Answer. Well, sir, it is, there of course—that is quicksilver—and the vein runs through there, and of course there is coal matter there all round, and there is copper there.

Question 17. How does the vein run; in what direction?

Answer. Well, it was running like northeast; but it is thrown around so that you can't tell its course. A quicksilver vein is not like any other veins. Where it is, there it is.

Question 18. Did you examine the top earth in the holes that were dug?

Answer. Yes, sir; I seen it all.

Question 19. State what they contained.

198 Answer. They contain a kind of yellowish dirt, with quicksilver in it. I supposed it came from this vein, naturally enough.

Question 20. The whole land contained this dirt?

Answer. Yes; of course, when the reduction was, that came off.

Question 21. How is that top earth reduced?

Answer. Well, sir, in some places we do it by washing, and others by burning. Of course, it has all got to be burned; but I have known a claim over here in Trinity County where they wash it the same as gold; sluice it first, and burn it afterwards; and I have no doubt that country over here would pan it out in that way. It is supposed that at one time the heat brought this out into the dirt—this in this Welch mine.

Question 22. In some cases, you say, they wash it out and burn

199 it afterwards. Is there any other way than washing it that they reduce this earth?

Answer. Well, sir, there is no other way that I know of.

Question 23. Do you know anything of making bricks, naturally?

Answer. Yes, sir; that is an old plan. Sometimes they make brick; but there is retorts what will burn this fine dirt. In a large furnace they used to burn everything to make these bricks; but these retorts will burn it all now.

Question 24. What experience have you had in extracting quicksilver from the surface-earth like this?

Answer. Of course, I have seen it made up in bricks and pay well.

Question 25. Have you had considerable experience?

200 Answer. Yes, sir.

Question 26. Where?

Answer. Almaden first, and in many other places where you will find it just like this (referring to Exhibit B).

Question 27. Then, where you find a vein of quicksilver under the earth, do you generally find the top of the earth containing broken-up quicksilver rock?

Answer. Yes.

Question 28. And that upper earth is worked by being made into bricks, and washed or burned?

Answer. Yes; that is just how it is.

Question 29. From the examination that you made of this land, would it pay to work the surface?

(OBJ.—Mr. WISE. I object. The witness has not shown that

201 he is competent to testify, and it is calling for his opinion.)

Answer. Well, sir, there is some places there that would pay; but for my own part I am after the vein; to get down where it is in the solid part of the vein. There are many holes sunk around there, and the parties that sunk them, I don't suppose they knew much about mining, and they came down to the schale, and then they quit; but you have got to sink down on the vein to get the vein. The vein has gone through that place.

Mr. HEATH:

Question 30. What indications did you see of there being a vein?

Answer. It is right there, plain to be seen; it is right there on top, you know.

Question 31. The indications are on top?

202 Answer. Yes, sir; it is kind of a yellow ochre and sandstone.

Question 32. Did you see any rock taken from the vein?

Answer. I took some from it myself.

Question 33. State whether it was rich or otherwise.

Answer. Well sir, it would go two or three per cent. But then we never calculate to have it very rich on top. It is all distributed over this land.

Question 34. Will two or three per cent. rock pay to reduce?

Answer. Yes; but not with the furnaces that they have had up there.

Cross-examination by Mr. WISE:

Question 35. Where were you born, Mr. Taylor?

203 Answer. I was born in England, sir.

Question 36. Were you educated as a mineralogist or miner?

Answer. Well, no, sir; my education was rather small. But then, as a miner, I think I am superior to many of these 'ere experts.

Question 37. That is your opinion?

Answer. Well, I have proved it, or it has been proved in the State.

Question 38. You say you were sent up to that section to examine the mines?

Answer. Yes, sir.

Question 39. Who sent you?

Answer. Well, I don't know as I am bound to answer that here; you know I have got my own friends here, Mr. Parrott and Mr. Bell, and they—they have sent me round to different places. I was sent

204 up by a party of my own friends.

Question 40. Who was it?

Answer. We were a party that was about to buy that.

Question 41. Who were they?

Answer. There was Mr. Harvey and many others that was up here, and stopping at our place at this time.

Question 42. Who were they?

Answer. Joseph Harvey was one, John Fall was another.

Question 43. Who else?

Answer. Well, I could reckon up three or four others, but I don't know the point of that.

Question 44. I have asked you to name the different parties—all that you remember—that sent you up there at that time?

205 Answer. Well, there was Joseph Harvey, and this 'ere other man Fall that I told you about; there was him and his brother. And there was another man, his name is John—I can hardly tell that name. There was them three and this other man; I could hardly tell his name.

Question 45. You say that Mr. Parrott and somebody else had been in the habit of sending you to such places?

Answer. Yes; I have been for Mr. Parrott and for Mr. Tom Bell.

Question 46. You have been for Mr. Parrott and for Mr. Bell looking for quicksilver?

Answer. I have been for several in the city.

Question 47. As an expert in quicksilver?

206 Answer. Well, I calculate to know quicksilver as well as they do.

Question 48. You went up there under a contract to buy?

Answer. I went up there to look at it.

Question 49. Did you have a contract to buy when you looked at it?

Answer. If I thought it was good enough I could buy it, if the title was good.

Question 50. Did you buy it?

Answer. No, sir.

Question 51. Why not?

Answer. Because the title wasn't good.

Question 52. Did you examine the title?

Answer. I found out enough that it wasn't good.

Question 53. Was that the only reason?

207 Answer. What is the use to buy a thing if the title isn't good?

Question 54. Is that the only reason?

Answer. Yes, sir.

Question 55. Did any one examine the title for you? Did you have any abstract made?

Answer. No, sir; because there was several there that told me that the title was not good.

Question 56. Then you did not buy because several parties up there told you that the title was not good?

Answer. Yes, sir.

Question 57. What was your contract to buy for?

Mr. HEATH. I object to that as immaterial and irrelevant, and not responsive to any matter drawn out on the direct examination.

208 Mr. WISE:

Question 58. What mine did you go up to examine?

Answer. I went up there to examine all of them; the Clayton mine, and the rest as well.

Question 59. Did you go up there to examine Powell's mine?

Answer. I went up there and examined several of them; examined this man's here (Powell's) mine.

Question 60. Did you go up there for the purpose of examining his?

Answer. I went up there for the purpose of looking at this man's mine, and while there I looked at the land round there generally.

Question 61. What man's?

Answer. Dr. Powell's.

Question 62. You went up there for that purpose?

209 Answer. Yes, in part.

Question 63. Was his the mine that you had the contract to buy?

Answer. I went up there to look at the land generally.

(Here the hearing is continued until half past 2 o'clock p. m.

AFTERNOON.

By consent, a further continuance is taken until to-morrow, 29th instant, nine o'clock a. m.)

FRIDAY, *June* 29, 1877.

Present, Mr. Heath, of counsel for complainant, Mr. Wise, of counsel for defendants.

210 Cross-examination of RICHARD TAYLOR resumed.

Mr. WISE:

Question 64. What land was it that you went up there to purchase? Did you have any contract to buy, or go up there to look at any land with an idea of purchasing?

Answer. I was sent up there to look at the land for the purpose of purchasing if I saw anything that was worth money.

Question 65. What land was it?

Answer. While there I examined this man's land——

Question 66. (Interrupting.) Let me make a suggestion to you. Please answer the questions directly. I ask you what land you went up there to purchase if it suited you?

211 Answer. Well, I would purchase this man's land——

Question 67. (Interrupting.) Did you go up there to purchase this man's land if you thought it was valuable?

Answer. Yes, I did.

Question 68. Did you purchase it?

Answer. I found the title was not good.

Question 69. Was that the reason?

Answer. That was a pretty good reason.

Question 70. Was that all the reason?

Answer. You can't get any man to pay money——

Question 71. (Interrupting.) Was that all the reason?

Answer. That was a part of the reason.

Question 72. Was that all the reason?

212 Answer. I don't say all; that was part of the reason that I didn't purchase the land, and the land there generally; because there was no man that would say it was a good title.

Question 73. Did you make a report after you came down?

Answer. I did.

Question 74. Did you make it in writing?

Answer. No; I didn't make it in writing. But then, I could make a report in writing if it was needed. I came down and reported by word of mouth, the same as we all do.

Question 75. You say the vein runs across this land?

Answer. Yes; one portion of it.

Question 76. What portion?

Answer. The portion that is right down below the old Clayton line there.

213 Question 77. Can you describe it by its government divisions?

Answer. No, sir; I don't know about them.

Question 78. How do you know the vein runs across it; do you only judge from the outcropping on the outer surface?

Answer. Why, of course, that is the only thing we can judge from.

Question 79. You stated, in your direct examination, that, so far as quicksilver mines were concerned, you only knew where it was when you had it. How can you tell that there was a vein there, then, by the outcropping?

Answer. I meant a bunch of quicksilver. We term it a cavola.

Question 80. Are you acquainted with mining terms generally?

Answer. Well, yes, sir; of course; I ought to be, I think.

214 Question 81. Do you know what a segregation is?

Answer. Well, I don't know, when you come down on these 'ere grammatical words.

Question 82. Do you know what an infiltration is?

Answer. Ilfiltration?

Question 83. An infiltration.

Answer. No, sir; it's no good to ask me them dictionary words.

Question 84. Do you know what an impregnation is?

Answer. Why, that is a bit of rock that is impregnated with any kind of mineral.

Question 85. Do you know what an ore deposit is?

Answer. Do I know?

215 Question 86. Yes.

Answer. Yes, sir. I have seen many hundreds.

Question 87. What is it?

Answer. Well, we call it, in the way of mining quicksilver, we call it a shoot of rock, a chimney, if you will. It is termed a chimney.

Question 88. Do you know what an ore is?

Answer. What do you mean, a loose woman?

Question 89. No, we are talking about mining now.

Answer. Of course I know what hore is—o-r-e; of course I know what it is. There is different kinds of hore.

Question 90. What is an ore?

Answer. We call copper ore, and some would term this 'ere

216 metal (cinnabar) ore, if you will; but we call it generally metal.

Question 91. Will you tell me, if you can, whether this land you saw up there, which you say was mineral land, was a segregation or an infiltration or an impregnation, or what it was, and give me your reasons for saying so?

Answer. It is no use of your asking me that. I told you before, I never swallowed the dictionary. Whenever you would ask me about mining I would answer it as far so I know. But I have opened mines here in this country when all these experts have said there was nothing there.

Question 92. How long did you stay up there?

Answer. I stopped up there two or three days at a time. I was up there a couple of times.

Question 93. What kind of a test did you take to see what quantity of mineral there was there?

217 Answer. I looked all round on top, and, of course, took away some rock and brought it down and showed it to my friends, and they was old miners as well as myself, and we calculated that it was a very good prospect, that is, had the title been good.

Question 94. Is that all you did, what you have told me?

Answer. That is all I did. Of course I never sunk any shaft. I looked at everything in sight there.

Question 95. You have told me then all that you did to ascertain that this was mineral land, and to ascertain its wealth as mineral land?

Answer. Yes, sir.

Question 96. You say that you found that the rock would go two or three per cent.

218 Answer. Yes, sir.

Question 97. What do you mean by two or three per cent.?

Answer. That is two or three per cent. at the hundred.

Question 98. Explain to me.

Answer. Some rock has been known to go as high up as eighty-three to the hundred.

Question 99. I am not speaking of that. I ask you what do you mean by two or three per cent.?

Answer. I should think you ought to know.

Question 100. I am not testifying. What do you mean by it?

Answer. That is a mining phrase with us; that it goes two or three per cent. out of the hundred. That is all I know about it.

219 Question 101. What do you mean by saying it goes two or three per cent. out of the hundred?

Answer. It goes two or three pound out of the hundred.

Question 102. You say that two or three per cent. pays well to reduce?

Answer. It did at the time I was there. If you can get hore now—that is, in a quantity—that will go three per cent. it will pay still by having a large furnace.

Question 103. You stated, on your direct examination, that you went on different occasion to examine mines for Mr. Bell and Mr. Parrott?

Answer. Well, sir; and other parties as well.

Question 104. You spoke of those two.

Answer. Yes, sir. I could speak of many others if I wanted to.

220 Question 105. Did you go in the employ of somebody else who was employed by Mr. Parrott and Mr. Bell, or did they themselves employ you to go?

Question 106. I never went for anybody else but for myself. If a man asks me to go and pays me for it, I go.

Question 107. Then Mr. Parrott and Mr. Bell have employed you to go and examine quicksilver mines, have they?

Answer. Yes, sir; and they would buy of me to-day; that is, if I could get anything that was for their interest.

Question 108. You are sure of that?

Answer. Yes, sir.

221 Redirect examination by Mr. HEATH:

Question 109. At the time you examined those mines, would it pay to work ore that would go half of one per cent. at that time?

Answer. One per cent. would pay at that time, because quicksilver was at that time pretty high to what it is now.

Question 110. This surface earth, would that have paid to work on that land of Dr. Powell's?

Answer. That would pay very well; that is, whereby you had water to sluice it.

Question 111. That is, if it was sluiced it would pay?

Answer. Yes, sir.

222 Question 112. You say that you do not understand dictionary words. I will ask you to state whether among miners the word "segregation," in connection with ores, is a common term?

Answer. Yes, sir; it is.

Question 113. What does it mean, the word "segregation"?

Answer. With regard to segregation, whatever you term it, I never heard it. I say the word "hores" is a common word. We have our terms in the way of our talk.

Question 114. Now, I will ask you the question, in connection with ores, is the word "segregation" a common term or not?

Answer. No, sir. I never heard the word before here.

223 Question 115. Among miners, in the working of mines, are the words "infiltration" or "impregnation" common terms?

Answer. Well, I have heard the word used—a thing impregnated.

Question 116. How about "infiltration"?

Answer. No, sir; I have heard of a thing being impregnated along with a kind of mineral.

Question 117. Have you a good collegiate education?

Answer. No, sir; of course not. I have been to school, of course. I can read almost anything that is wrote in English.

Question 118. How long have you been engaged in actual mining?

Answer. I have been engaged thirty years or over—ever since I was ten years old. So you must think what an education I could have got. But, then, mark you one thing, I can read a letter or write a letter.

224 Question 119. Did you see the old reduction works?

Answer. Yes, sir; I did.

Question 120. How near the vein that you traced was that reduction works?

Answer. The vein passed right by that reduction works.

Question 121. From that reduction works which way did it run?

Answer. It passed right into this man's (Powell's) place.

Question 122. Which way—north, or east, or west?

Answer. Kind of northeast—that way.

Question 123. How far did you trace the vein? Did you trace it on the side of the hill that his house is upon?

Answer. Yes; and across that gulch there.

225 Question 124. Did the vein, then, extend from the reduction works to a point across the gulch on the land upon which his house is situated?

Answer. That is it.

Question 125. It did, eh?

Answer. Yes, sir.

Question 126. Did you examine the earth on the slope of the hill?

Answer. Yes, sir; of course I examined the earth there.

Question 127. State whether the earth contained quicksilver all through it on that side of the slope towards his house.

Answer. Yes, sir; and it is supposed by all miners that the metal that we find there scattered came out of the vein. Of course it must come out of the vein just the same as the gold of the placer mines

226 here.

Question 128. You have mined in placer mining?

Answer. Yes, sir; in all kinds of mining.

Question 129. I will ask you to state if, in placer mines, the gold is not supposed to have washed there, or to have come off from the vein and been left there on the surface?

Answer. That is where it is supposed to have come from.

Recross-examination by Mr. WISE:

Question 130. You say that the surface dirt could be used advantageously if you had water for sluicing?

Answer. Yes, sir.

227 Question 131. Do you know any place in the world where they sluice earth for quicksilver?

Answer. Yes, sir.

Question 132. Where?

Answer. They sluice it up here in Trinity County, in one place belonging to Mr. Zielonbach. But understand for a moment, where they sluice, the vein is right alongside of it.

Question 133. Is it possible to get water on this hill for sluicing?

Answer. That is another matter what I didn't look into.

Question 134. Did you see any water that could be got there?
Answer. Oh, there is plenty of water around there; that is, with a little trouble.
228 Question 135. When you went from here to that land, tell me how you went?
Answer. I went to Oakland.
Question 136. Where did you go then?
Answer. I went up in a buggy.
Question 137. Where to?
Answer. Up to Clayton.
Question 138. How did you go then?
Answer. I footed it up.
Question 139. How far is it from Clayton?
Answer. About three miles, as well as I could tell; I can't recollect exactly. Somewhere at the rate of about two or three miles.
Question 140. How far is it from Oakland to Clayton?
229 Answer. It is about—it may be twenty or twenty-five miles; something that way.
Question 141. How long did it take you to drive from Oakland to Clayton?
Answer. I can drive as fast as anybody else.
Question 142. How long did it take you to drive there?
Answer. I had dinner on the road.
Question 143. What time did you start, and what time did you get there?
Answer. I can drive up there in five or six hours.
Question 144. Did you drive up there in that time?
Answer. I stopped on the road a little while. If I was pushed I guess I could drive there in six hours.

(Signature waived by consent.)

230 *Testimony of Archibald Stuart.*

Examination-in-chief of ARCHIBALD STUART, by Mr. HEATH:

Question 1. State your name, age, residence, and occupation.
Answer. Name, Archibald Stuart; age, nearly sixty; place of residence, I am living at present near Lafayette, prospecting for gold; occupation, mining.
Question 2. How long have you been a miner?
Answer. Well, sir, about over thirty years.
Question 3. Continuously?
Answer. Yes, sir; following nothing else.
Question 4. Where have you mined?
Answer. Well, sir, in this Pacific coast and in Chili, and in
231 other parts, Nevada included.
Question 5. What have you mined for?
Answer. Gold, silver, copper, coal, anything else that comes in the road.
Question 6. Have you mined any for quicksilver?
Answer. Some little, not a great deal.
Question 7. Where have you mined for quicksilver?
Answer. In several parts where I have been prospecting and looking out for it.
Question 8. State the places.
Answer. Well, I have been looking round Mount Diablo here for it.

Question 9. Any other district?

Answer. Yes, sir. I have been in Chili, looking for it, too.

232 Question 10. Did you find quicksilver in Chili?

Answer. Yes, sir.

Question 11. Within the thirty years, about how many years have you mined for quicksilver?

Answer. I have never made it any special business mining for quicksilver. Because why? I never got into any contract for mining quicksilver. I know quicksilver when I see it.

Question 12. Off and on, about how many months or years have you mined for quicksilver?

Answer. Well, I have spent some years looking for quicksilver ore, time and again.

Question 13. Do you know the land upon which Dr. Powell resides?

Answer. Yes, sir; I know that land well.

233 Question 14. Have you examined the land with a view of astaining its mineral deposits?

Answer. Yes, sir.

Question 15. State what you found.

Answer. Well, sir, I found rich deposits here and there, wherever I went over the ground and adjoining it, what I would consider valuable specimens of quicksilver ore—cinnabar itself. I can wash it out, as I have done years before, even before he was on that ground, said Powell. I knew that before he was on it.

Question 16. State where you made the examination.

Answer. The nearest to my recollection, some years ago. I went on the north part of the claim and up the west side, for prospecting that ground.

234 Question 17. When did you examine it the last time?

Answer. I suppose about three or four weeks ago I was up there and took a look all over it.

Question 18. What work did you find had been done upon it?

Answer. I see one place where I found Powell running a car. He was working then, digging; had a pick in his hand, working in a cut.

Question 19. What did you find in the cut?

Answer. I found any amount of quicksilver ore there—good looking specimens to me.

Question 20. About what per cent. would you judge?

Answer. I could not say without testing it, but I should think

235 it was very rich from the appearance of it to me, but I won't say what it was worth or what not. Of course, I would have to test that, and that I did not do, but I consider it very good ore.

Question 21. Did you examine the surface earth?

Answer. Yes, I examined the surface earth; washed it out myself.

Question 22. What did you find?

Answer. I found cinnabar pure.

Question 23. Any quantities of it?

Answer. Yes, sir; in different portions of it. I washed it out in a pan to satisty my own curiosity.

Question 24. How deep down did you dig?

Answer. Well, in one place I went down over two feet.

Question 25. Was the hole there when you went there?

236 Answer. No, sir; I was by myself, and worked according to my own ideas. I had heard so much talk about that ground that I went there to satisfy myself.

Question 26. Down at the bottom of that hole, two feet deep, what did you find?

Answer. I found it very rich, yellow dirt, without rock, or anything. I have got a sample of it in my pocket, what I got out of less than a pint of dirt. If I had taken a ton of that, that would have shown its immense richness. There was hundreds—I won't say thousands—of tons of that same dirt right before my eyes.

Question 27. Were there any other prospect holes dug around the place that you saw?

Answer. Yes, sir; I seen several places.

237 Question 28. In those different prospect holes, what did you find?

Answer. I seen symptoms of quicksilver more or less. I guess somebody was looking for the same thing by the looks to me.

Question 29. Did you go over the whole hundred and sixty acres?

Answer. I couldn't say I went over every foot of it. I have been traveling around there several years ago.

Question 30. Did you go on all portions of this eighty?

Answer. Yes, sir.

Question 31. State whether cinnabar was found all over it.

Answer. Well, I could find it anywhere I went to, it don't matter wherever I went; gulches and side hills. It is almost impossible to walk in some places, it is so steep.

238 Question 32. Did you examine a tunnel that had been dug there?

Answer. Yes, sir.

Question 33. What did you find in the tunnel?

Answer. Symptoms of quicksilver ore.

Question 34. The open cut, you say Dr. Powell was at work in it when you were there?

Answer. He was in a cut or gulch when I was there, filling a car with dirt, when I spoke to him.

Question 35. Do you say that contained rich ore?

Answer. Yes, sir; rich quicksilver ore.

Question 36. Where was that cut with reference to the reduction works?

Answer. I should say it is several hundred feet below where the retort works are placed; not very far from it. I see his corner stake

239 there, close along his line on the other side of the gulch.

Question 37. Did you examine the furnace at those reduction works?

Answer. Yes, sir; I was standing looking at it.

Question 38. Did you examine the cracks in it with a view of ascertaining how much, if any, quicksilver was wasted?

Answer. Yes, sir; I should think there was quicksilver wasted by the appearance of that to me. The way the retorts is, a great many of them broken, and the way they stand in the furnace, it looks as if they must loose considerable of it.

Question 39. The furnace that they are now reducing there with, the new rock furnace; did you examine the sides of it?

240 Answer. Not particular, no more than I walked round it.

Question 40. You did not see any globules of quicksilver on the sides of that furnace?

Answer. I didn't take notice of them. I was looking with that idea. I noticed it was very carelessly put together anyway.

Cross-examination by Mr. WISE:

Question 41. Where did you mine on this coast?

Answer. Well, sir; I have mined in the Mount Diablo coal mines in Washoe, now Nevada, in Washington Territory, Oregon, and all around this Pacific coast, in different places.

241 Question 42. What mines were you in in Washoe?

Answer. I worked in the Yellow Jacket; it is now the Yellow Jacket. I was sinking the slope in that at Gold Hill. I was working for Colonel Harry S. Fitch there.

Question 43. Is that the only mine you were working in in Washoe?

Answer. I prospected a great deal there in Nevada them days.

Question 44. In what capacity did you work in the mine?

Answer. I took a contract for opening it, running the tunnel.

Question 45. With whom did you make the contract?

Answer. I think his name was Sherman; I don't know.

Question 46. Where does he live?

242 Answer. He lived in Nevada then.

Question 47. What was his first name?

Answer. I forget his given name. He had an office in the Pioneer Mills there at Gold Hill afterwards.

Question 48. What year was that?

Answer. That was in '61, sir; '60 or '61, I forget which.

Question 49. Was that all the mining you did—take a contract to do that work?

Answer. I was in several wild-cat claims, taking contracts.

Question 50. Wild-cat claims are claims that are valueless, are they not?

Answer. Yes, sir; mines that prove to be valueless afterwards.

Question 51. Did you open any of them for yourself?

243 Answer. No, sir.

Question 52. How long did you work in the wild-cat claims?

Answer. I took a contract and finished it in Gold Hill, one hundred and sixty feet. That was all I had to do with it. I finished my contract, and a contract was given to somebody else.

Question 53. Did you ever work in any that had paid and produced ore?

Answer. Well, sir; I worked in Ophir. That produced ore.

Question 54. In what capacity did you work in Ophir?

Answer. Mining, sir.

Question 55. Day laborer, or superintendent, or what?

Answer. No, sir; I was a laborer, mining.

244 Question 56. How many men were working at the same time you were there?

Answer. There was quite a number. I suppose a hundred men, for aught I know.

Question 57. Is the Monte Diablo district the only district where you ever had any experience in quicksilver mining?

Answer. Oh, no. I have been in Chile, where I have seen more than that, before I came to California.

Question 58. Have you seen quicksilver mines there in Chile?

Answer. Yes, sir.

Question 59. Whereabouts?

Answer. In Santiago, Caronel, and Sota.

Question 60. What is the name of the mines you were in there?

245 Answer. They have got a Spanish name. I forget the name of it myself.

Question 61. In what capacity did you work those mines?

Answer. Well, sir, I was working a miner there, too.

Question 62. Is that the only place where you ever knew quicksilver mines?

Answer. That is all, sir; in Chile and here. I have run around looking for quicksilver here in California some. I know quicksilver when I see it.

Question 63. You say that you examined the land in controversy here?

Answer. Yes, sir; I have been all over it long before he was over it.

Question 64. Can you describe the land that is in suit here now?

Answer. I can describe the appearance of it.

246 Question 65. Do you know the section and quarter section?

Answer. No; I don't know the number of it. I know it is close on the meridian at Mount Diablo. It may be one or two, or something like that. I didn't pay no attention to them things.

Question 66. You only know it as land that Powell lives on?

Answer. Yes, sir; I know he lives on it and lays claim to it. That is all I knew about it.

Question 67. You say you found in this land rich deposits?

Answer. Yes, sir.

Question 68. How did you ascertain that they were rich?

Answer. Well, if I dig up a piece of ore and see it, and see the
247 cinnabar in it, I have a good judgment to see that it is rich.

Question 69. The only way you know is judging by your eye?

Answer. Of course; that is what we all tell by, of course. Seeing is feeling the naked truth.

Question 70. What was it that you washed out?

Answer. Cinnabar I washed out.

Question 71. What did you wash it out of?

Answer. Out of the sand and dirt. I can produce it here in my pocket to you.

Question 72. Was it in lumps, or stones, or what?

Answer. I dug a hole, say, for instance, two feet or three—I will say two feet anyway. The dirt appeared to me what I have seen by experience to be rich quicksilver dirt. "Now," said I, "I will go
248 and dig a hole, to see what I can find." I don't believe that any human being was in that spot before to test it. I am sure almost. I took a pan of rock and dirt and took the stones out of it, and carried it to the water, and panned it as I would wash gold. I kept washing until I got black sand. The amount of dirt was less than a pint. I took particular notice of that, and here I have got what I found in that, less than a pint of dirt, the cinnabar that showed to me that was valuable. (Witness produces a small bottle.)

Question 73. You say you knew this land years before Powell was on it?

Answer. Yes, sir. I don't suppose he knew where the land was when I was on that first.

Question 74. Did you know it was rich in cinnabar there?

249 Answer. I knew there was quicksilver on there.

Question 75. Did you know it was rich?

Answer. I thought it was rich.

Question 76. Do you think it would pay for working?

Answer. Yes, sir.

Question 77. Why didn't you take it up?

Answer. They were disputing it. Some said it was a Spanish grant, and I didn't want to go and bother my head about it.

Question 78. Have you got any mining claim up there, at all?

Answer. No, sir; none at all.

Question 79. If you did not want to bother your head about it, why did you examine it long before Powell was there?

250 Answer. I examined it along with the other mines, out of curiosity. I have been to many excitements. I was looking to see if I could get a claim, and if not, I was satisfied to prove that there was quicksilver there.

Question 80. Are you educated in mineralogy?

Answer. No, sir; I read a little about it once in awhile.

Question 81. Are you educated in geology?

Answer. No, sir; not much.

Question 82. Whereabouts were you educated?

Answer. Glasgow, Scotland.

Question 83. At the University of Glasgow?

Answer. Yes, sir.

Question 84. Graduated there?

Answer. Yes, sir.

251 Question 85. Have you got a diploma?

Answer. No, sir.

Question 86. What were you studying there?

Answer. I studied for medicine.

Question 87. Did you study Latin and Greek?

Answer. No, sir; I left before I graduated there.

Question 88. But you commenced studying medicine?

Answer. Yes, sir.

Question 89. Did you commence studying medicine before you had studied some Latin and Greek.

Answer. No, sir; I was in Latin, in school, before I went there.

Question 90. How many years did you study Latin?

252 Answer. I didn't study it at all.

Question 91. But you did study Latin?

Answer. Yes, sir; I studed Latin a little while.

Question 92. How many declensions are there in Latin?

(OBJ.—Objected to as irrelevant and immaterial.)

Answer. There is a good many, I guess.

Question 93. How many genders are there in Latin?

(OBJ.—Objected to as inpertinent and irrelevant.)

No answer.

Question 94. Can you tell?

Answer. No, sir; I can't tell.

253 Question 95. What is the meaning of bonus in latin?

(The same objection.)

Answer. I don't know the meaning of any of it, to tell you the truth; and not to be uncivil about it, I don't want to enter into scholarship with you. I have forgot what I did learn once.

Question 96. You say you examined this land several weeks ago and found Powell there with any amount of quicksilver ore?

Answer. Yes, sir; any amount, close by where he was running the cart there.

Question 97. In what shape was the ore?

Answer. In rock.

Question 98. You judged it had quicksilver in it merely by your eye?

254 Answer. Oh, yes; anybody that was a miner could see that plain enough.

Question 99. You couldn't tell it would pay?

Answer. Oh, yes, sir; it was richer than what they are putting in their furnaces up there; and I think they are getting quicksilver out of that ore. There must be quicksilver in it.

Question 100. What per cent. will it go?

Answer. I am not certain; I don't know what per cent. it would go, and at the same time I think it would go richer than what they are putting in the retorts—that is to tell the truth. I don't know what it would turn out.

Question 101. Do you know what percentage that which they were putting in the retorts would go?

255 Answer. Some of it looks to be three or four per cent. Some of it very good ore, and some of it no great shakes, as the saying is. They take it as it comes, I guess.

Question 102. You say you found very rich dirt?

Answer. Yes, sir.

Question 103. That was separate from the rock, that yellow dirt?

Answer. There was no rock where I dug the hole. I had only a shovel at the time.

Question 104. Did this yellow dirt have quicksilver in it?

Answer. Yes, sir.

Question 105. You judged that it had quicksilver in it by its appearance to your eye?

Answer. There (referring to bottle, afterwards marked "Complainant's Exhibit A"), is the cinnabar which I got out of it.

256 If I got that from less than a pint of dirt, what would I get out of a ton?

Question 106. You say you found quicksilver all over the land that Powell claimed?

Answer. Wherever I went in the little gulches I found this ore.

Question 107. How large is this Powell claim there?

Answer. I should say one hundred and sixty, or thereabouts.

Question 108. And you went all over that land?

Answer. Yes, sir; and there where Mr. Welch was, I could take a pan and go into every ravine and find you quicksilver-quartz rock, and find it in the boulders, on top, and dig down and find it in a large body. Taking about a northeast direction, anywhere across his land, I can find a lot of it.

257 Question 109. And that whole four-forties is a solid mass of quicksilver?

Answer. I won't say that the four-forties is a solid mass of quicksilver, but, more or less, you see all over them indications of quicksilver.

Question 110. There is enough in every part of it to pay for extracting the quicksilver?

Answer. Everywhere I have been over it.

Question 111. What is the shape of that land in controversy here that Powell claims; do the four-forties lie in a body, or are they oblong, or how?

Answer. It is cut up by gulches.

Question 112. Is it oblong in shape, or how is it?

258 Answer. Well, it is nearly a square. I should think so by the appearance of the northeast and southeast corners.

Question 113. You really don't know, then, whether it is square or not?

Answer. I didn't examine whether it was square exactly; but it looks to be, by the way the lines run, that it would form a square. Take

it from corner to corner, it would form a square, I should think; I am not certain; very near.

Redirect-examination by Mr. HEATH:

Question 114. Look at Exhibit A. Where was that taken from?

Answer. That I took out of the gulch on the west wide.

259 Question 115. Is that a fair sample of the surface earth?

Answer. Yes, sir.

Question 116. How much earth was there that you took this out of?

Answer. Well, it was not a shovel full that I put in the pan, and there was little stones which I threw out without washing them; if I had saved them and got the dirt off from the stones, I would have got more, but I threw them out; there was not a pint of dirt left.

Question 117. Look at Exhibit B. Where did that come from?

Answer. I got that on the southeast side, if I don't mistake. I think the southeast corner of that claim; some distance away from the works, in a ravine.

Question 118. Was it in the cut that Powell was working in?

Answer. Yes, sir.

260 Question 119. State whether that is a fair sample of the rock that you saw in that cut?

Answer. Well, I could get better than that if I should take the trouble. I left behind me a richer piece than this.

Question 120. Then you would say that Exhibit B was a fair average sample of the rock that was there?

Answer. Yes, sir; that is a fair average sample, I think.

(Exhibits A and B, above referred to, are here offered in evidence by complainant.)

Mr. WISE. Do you swear that that Exhibit B contains quicksilver?

Answer. I should think so. I wouldn't swear to it unless quicksilver came out of it, but I should think it did contain quicksilver.

261 Question 121. Did you break that off from a ledge, or was it broken off from a larger piece of rock?

Answer. It was a piece of rock half the size of that bench there (referring to judge's bench in circuit-court room) that I saw. God knows what size it was.

Question 122. Was it a ledge?

Answer. I would call it a mere body of quicksilver ore. I wouldn't say it was a ledge. I never knew a quicksilver ledge; not a defined ledge.

(Signature waived by consent.)

262 *Deposition of J. L. Shannon.*

Examination-in-chief of J. L. SHANNON by Mr. HEATH:

Question 1. State your name, age, residence, and occupation.

Answer. Name, J. L. Shannon; age, fifty-four; residence, Contra Costa County; occupation, farmer.

Question 2. Do you know the northeast quarter of section 29, township 1 north, of range 1 east, Mount Diablo base and meridian?

Answer. Well, I have never taken any particular pains to learn the location of the claim.

Question 3. Do you know the land that Dr. Powell lives on?

Answer. Yes, sir.

Question 3. Do you know the land that Dr. Powell lives on?

Answer. Yes, sir.

Question 4. Have you seen the corner stakes?

263 Answer. Yes, sir.

Question 5. You know where the corners are?

Answer. Yes, sir.

Question 6. Taking the retort and reduction works that are upon that land for a stating point, how far from the retorts is the northeast, and in what direction?

Answer. Well, it is nearly the width of the quarter section.

Question 7. About how far; about the width of a forty acres, or more or less?

Answer. If I understand you right, it is a half a mile from corner to corner, is it not? This is very near one corner, and the northeast corner, as I take it, is the opposite corner.

Question 8. Which corner is the reduction works on?

264 Answer. I should think near the southeast corner.

Question 9. On which side of the hundred and sixty acres are the reduction works?

Answer. On the southeast.

Question 10. Do you know where Dr. Powell's house is that he lives in?

Answer. Yes, sir.

Question 11. On which side of the land is that?

Answer. That is on the northwest.

Question 12. How near the line?

Answer. Well, I should say—I should say maybe thirty or forty rod. I didn't examine particularly about that. There is a hill that runs right down, and leaves him down here in the hollow.

Question 13. You say it is near the north line of this land?

265 Answer. Yes; north and west.

Question 14. Have you seen any open cuts, and, if so, how many, upon that land?

Answer. Well, I saw one in particular.

Question 15. In contradistinction to holes, did you see more than one?

Answer. No, sir.

Question 16. Where was that?

Answer. That was on the southeast side.

Question 17. How near the reduction works?

Answer. I should say three or four hundred feet. I couldn't say exactly.

Question 18. Is there more than one of those open cuts—continuous open cuts—on the place?

Answer. I didn't see more than one.

266 Question 19. Have you been all over the place?

Answer. Very nearly; as you might say I went round it. I saw the corner stakes; saw the corners of the survey.

Question 20. And then you crossed the land in different places?

Answer. Yes, sir.

Question 21. And saw but one of those open cuts?

Answer. But one of those that I examined.

Question 22. Did you see any prospect holes?

Answer. Yes, sir.

Question 23. Describe the topography of that land—the surfaces.

Answer. Well, from the appearance. I had a pick with me.

267 Question 24. I am now speaking of the general appearance—the looks of it.

Answer. It is barren, hilly, broken country rather; lays something like that (⌒).

Question 25. Is there a hill running nearly through the center of it?

Answer. Yes, sir.

Question 26. As to that hill, where are the reduction works?

Answer. Southwest.

Question 27. Is that upon a hill or in a valley?

Answer. It is rather a level spot where it is, but it is raised.

Question 28. Is it in a ravine or on a hill?

Answer. It is on neither.

Question 29. Is there a hill on this side and a hill on that?

268 Answer. No, sir; there is a hill on the north side—Mount Diablo.

Question 30. And what is there on the north side, between that and Powell's house?

Answer. There is this backbone all the way down.

Question 31. Is that backbone a hill?

Answer. Yes, sir.

Question 32. That is in a valley, then, is it?

Answer. Yes, sir.

Question 33. How high is that hill north of the reduction works from the reduction works—the hill between that and Powell's house? How high is that hill from the reduction works to the top of it?

Answer. I couldn't say it is much higher than the reduction works.

269 Question 34. That hill?

Answer. 'Tis very little.

Question 35. When were you there last?

Answer. Last week.

Question 36. Then you would think that the reduction works was on a level with the top of the backbone?

Answer. There is what I call a sag in there. You go round and come up on this side, and come around in this place (illustrating), and there is a natural backbone running down to his house. It may be a little higher.

Question 37. From Welch's house you go down a hill to get to the reduction works, don't you, from the old mine?

Answer. Yes, down a ravine. I did.

270 Question 38. Then when you come to the reduction works, or where that open cut of Powell's is, isn't there a considerable elevation between his house and that reduction works?

Answer. Between whose house?

Question 39. Between Powell's house and the reduction works.

Answer. Why, of course there is. I thought you wanted me to give you an idea how much hill there was from the reduction works to this hill.

Question 40. Oh, no; from the reduction works to the top of that hill?

Answer. Oh, yes; there is quite a hill.

Question 41. About how high would you think it was?

Answer. I should think it might be anywheres from one hundred and seventy-five to two hundred feet.

271 Question 42. Then the reduction works—Mount Diablo is on the south side of the reduction works, and then on the north side of the reduction works there is a high hill, from one hundred and seventy-five to two hundred feet?

Answer. Yes, sir.

Question 43. You say you are a farmer. How long have you farmed?

Answer. I commenced in 1856 in this country.

Question 44. Where have you generally farmed?

Answer. In San Mateo County and Contra Costa County.

Question 45. How long have you been in Contra Costa?

Answer. About twenty years; since 1856.

Question 46. Since 1856 you have been familiar with Contra Costa County?

272 Answer. Yes, sir.

Question 47. What kind of vegetation is there growing upon this land of Dr. Powell's?

Answer. At the present time?

Question 48. Yes.

Answer. Very little, if any.

Question 49. At any time?

Answer. Well, the general grass that grows there is what we call the wild squirrel grass. There is very little of it, and it is very poor grass.

Question 50. Of what value is that land for grazing purposes?

Answer. I wouldn't take a gift of it.

(OBJ.—Mr. WISE. I object to the answer. It is irrelevant and shows no fact.)

273 Question 51. (Mr. HEATH.) You have raised stock, have you not?

Answer. Yes, sir.

Question 52. Both sheep and cattle?

Answer. Yes, sir; and run on that land, too.

Question 53. How much land is there on that farm, if any, that is fit for grains and other crops?

(Objected to as irrelevant and immaterial.)

Answer. Well, I should say, possibly three acres.

Question 54. What kind of soil has that three acres?

Answer. Well, some of it is a dark—rather inclined to be adobe a little, I should think.

274 Question 55. Good or poor?

Answer. Well, it is naturally poor soil; I am speaking of this three acres now.

Question 56. Adjoining is there any stream of water near that that could be utilized for washing gold or quicksilver?

Answer. At the present time.

Question 57. No; in the winter, or any time.

Answer. I suppose, in the case of floods, it may be brought there; some of it.

Question 58. State whether there are any ditches for the purpose of bringing water on to that land.

Answer. Yes, sir; I saw quite a long ditch. I didn't go from end to end of it. I should judge from appearances that the head of the

275 ditch was taking the water from some other claim.

Question 59. From another piece of land?

Answer. Yes, sir.

Question 60. Where the head of that ditch is, about how many months in the year does there run considerable water?

Answer. I could not say, sir.

Question 61. You are not familiar enough to say?

Answer. No, sir; I wasn't aware that there was any water running

there at all to amount to anything. There is no stream—no head there that I know of. I have been over the land a great many times, and never noticed any chance for it.

Question 62. The creek was dry when you have been over there?

276 Answer. Oh, I have been over there when there was plenty of water in the hills, and running down across the land.

Question 63. How long will the water last, in ordinary seasons, that runs down from the hills and runs in that creek?

Answer. I should think that by the 1st of May it is all gone.

Question 64. Commencing when?

Answer. Commencing with the rainy season, December or January.

Question 65. Then I understand you to say that from December to May, in ordinary seasons, there would be a volume of water running in the creek?

Answer. I should think there would, sir.

Question 66. Sufficient for sluicing purposes?

Answer. Well, yes; I should say so.

277 Question 67. The creek is dry now, is it not?

Answer. Yes, sir; except in spots—springy spots.

Cross-examination by Mr. WISE:

Question 68. This cut that you say you saw about four hundred feet from the reduction works, is it being used now, or is it abandoned, or what?

Answer. Well, it looks as though there had been a slide there, and they had stopped work.

Question 69. It looks old, don't it?

Answer. Well, I didn't see no signs of late work there.

Question 70. Bushes grown up around it?

278 Answer. Oh, no.

Question 71. Did it look like it was many years old?

Answer. Well, I didn't particularly take notice. I noticed there was a wooden track and a car on it, and I came very near getting a fall there. That is the way I noticed that particularly. And at the head of it I could see that the track was burried up.

Question 72. Everything around the cut looked wrecked and in decay, did it not?

Answer. Oh, no. It looked as though men had been there. You can't exactly tell how long a thing has laid. It looks as though they had been blasting there, and had throwed the rock down, and had some time good ready and worked there. I could not say how

279 long ago. I had not been on to the claim for several years until this time.

Question 73. When did you first see that cut?

Answer. Last week.

Question 74. That was the first time?

Answer. Yes, sir.

Question 75. Then you cannot tell how long since it had been used?

Answer. No, sir.

Question 76. It might have been a great many years, and might have been a very short time?

Answer. I could not say.

Question 77. You can tell, though, that it had not been recently used. That you could tell with ease, could you not, from the appear ance?

Answer. Well, I should say nobody had been to work there
280 for a week or two.

Question 78. You say you saw a ditch there that was dry?

Answer. Yes, sir; all dry.

Question 79. You could not tell whether that had been used or not, could you?

Answer. No, sir.

Question 80. That is, within a year?

Answer. I don't know as it was ever used, so far as I know.

Question 81. You could not tell whether it was a ditch for mining purposes or not?

Answer. It is a similar ditch, such as I have used for mining purposes.

Question 82. That is all you can tell?

Answer. Yes, sir.

281 Question 83. You say you saw a good many prospect holes. How many prospect holes do you suppose you saw?

Answer. Well, I should judge I saw a dozen.

Question 84. Not over that?

Answer. I could not say, for I did not go for the purpose of examining the holes.

Question 85. Did those prospect holes look new or old?

Answer. Well, sir, I could not say, for I did not go directly to any of those holes.

Question 86. Where do you reside?

Answer. I reside at Walnut Creek, Contra Costa County.

Question 87. How far from this land?

282 Answer. At the present time I am about ten miles, I should say.

Question 88. How far are you from Oakland?

Answer. I am about sixteen miles. Formerly I used to live in Clayton. I lived there from 1856 to 1864, I think.

Question 89. How long have you known Powell?

Answer. Five years, I think.

Question 90. You called him Dr. Powell?

Answer. That was the name that I was introduced to him.

Question 91. Do you know whether he is a d'r or not?

Answer. I do not, anything more than I saw his sign hanging up in his house.

283 Redirect examination by Mr. HEATH:

Question 92. What examination, if any, did you make of the land in controversy, with reference to its mineral character?

Answer. I took a pan, and commenced at Dr. Powell's house, or just below, in the ravine. I went down about a foot and a half, and there took a pan of dirt and washed it out. I got a very nice lot, nearly as much as there is in there (referring to bottle, Exhibit A).

Question 93. Did you make other examinations?

Answer. Yes, sir; I went up to the southwest corner, and there I made another, not as good, but I found this quicksilver.

Question 94. What other examinations, if any?

284 Answer. Then I went down to the tunnel, and there I dug under a boulder as deep as I could conveniently. I also broke off the rock and found what I, from what slight experience I have had, thought to be very good specimens indeed. And then I went below that and took this yellow-colored dirt, and there I got, I should say, as much as

there is in there (Exhibit A) in one pan full. Then we went further down towards the road, at the northwest corner or on that side, and there was a spring. The dirt was black, loamy, and full of slate—looked as though it was a ledge, you know, and there the ledge apparently was. I don't know what you call it; it seemed to be mixed with this same cinnabar. I didn't wash it out, but the rock seemed to be colored red.

Question 95. When did you make these several examinations?

Answer. Last week; Tuesday, I think.

285 Question 96. Did you make examinations on each forty of the hundred and sixty?

Answer. I did.

Question 97. Did you examine in fresh places, where no one had worked?

Answer. I did.

Question 98. Each time?

Answer. With the exception of this spring, I don't know but people have examined that before. It was solid earth where I examined; never had been moved.

Recross-examination by Mr. WISE:

Question 99. Did you go there at Powell's request for the pur-

286 pose of making these examinations in order to be a witness here?

Answer. I met Dr. Powell, and he was showing me some rock. I told him I had been over the ground several times there prospecting, and was not aware that there was such rich rock there. He wanted to know if I didn't want to come up and examine it. I told him I would do so, and so I went.

Question 100. You went there to examine it in order to be a witness here?

Answer. I knew the land was in dispute——

Question 101. You went there for the express purpose of being a witness here?

Answer. Well, yes, sir.

Question 102. And you went to such places as he pointed out to you?

287 Answer. No, sir; I did not. He told me to go where I pleased.

Question 103. Did you ever have any experience in mining?

Answer. Yes, sir.

Question 104. Where?

Answer. In Tuolumne County.

Question 105. What for?

Answer. Gold and silver.

Question 106. How long?

Answer. Two years.

Question 107. What kind of mining?

Answer. For gold and silver.

Question 108. But what kind of mining?

Answer. Placer mining and sinking a shaft in quartz.

288 Question 109. The only experience you have ever had in quartz mining or anything of that kind was sinking a shaft?

Answer. I mined also in this section, Clayton district, in 1862 and '3.

Question 110. That is all the experience you ever had?

Answer. Yes, sir; about three years.

Question 111. Have you any education as a mineralogist?

Answer. No, sir.

Question 112. Did you ever have any experience in quicksilver mining?

Answer. Only in prospecting there for about a year.

Question 113. When did you first go over this land?

Answer. I first knew this land in the fall of 1856.

Question 114. Did you prospect it at that time?

289 Answer. Not at that time.

Question 115. When did you first prospect there?

Answer. I think 1862 or '3.

Question 116. You prospected for the purpose of taking up claims?

Answer. Yes, sir.

Question 117. You prospected upon this land.

Answer. I could not say that I prospected upon the land. It was not surveyed then.

Question 118. Did you take up any claims then?

Answer. Yes, sir.

Question 119. Where?

Answer. Southwest of what is called the Welch claim.

Question 120. Do you own any claims there now?

290 Answer. No, sir.

Question 121. Did your claims turn out anything?

Answer. We could not find it so that we thought it would pay at that time.

Question 122. Are you sure that any of the samples that you saw or took out from this land—are you sure that they contained quicksilver?

Answer. I saw rocks with quicksilver clear in them at that time.

Question 123. Where did that rock come from?

Answer. The Welch claim.

Question 124. I say on this land are you perfectly sure that you saw anything that contained what you were absolutely certain was quicksilver.?

291 Answer. I know it did as well as I know almost anything.

Question 125. How do you know it was quicksilver?

Answer. My brother was quite a miner, and he used to get the rock and bring it home and pound it up and get it out.

Question 126. Is all that you know?

Answer. I never took any out myself.

Question 127. You don't know except from your judgment and eye, and from the appearance and color of the rock, and what you have been told, that what rock or earth you took out from this land contained quicksilver?

Answer. No, sir.

Question 128. What you saw and took to be cinnabar, was it in dirt, or clay, or rock, or was it in all three, or how was it?

292 Answer. All three, sir.

Question 129. Did you see any ledge?

Answer. I didn't see any ledge of quicksilver rock—what I would term a ledge.

Question 130. This yellow stuff that you saw, you would call that what?

Answer. Clay, I should think.

Question 131. You thought it was made yellow by what?

Answer. I thought it was the formation of the land.

Question 132. Did you think it was cinnabar because it was yellow?

Answer. No, sir.

Question 133. Why did you think it was cinnabar?

293 Answer. I saw this color of the cinnabar in it, and from the heft.

Question 134. That is red or yellow, is it not?

Answer. Yes, sir; red.

Question 135. Did you think it was cinnabar because it was red?

Answer. I thought it was cinnabar because it was red.

Question 136. Then whenever you see a red rock like that you think it is cinnabar?

Answer. No, sir; I do not, sir.

Question 137. What is the difference?

Answer. The difference is, this is soft, and by wetting of it it will show the symptoms of cinnabar—all that I have seen.

Question 138. Then whenever you have seen a red rock that is soft, and wet it, you took it to be cinnabar?

294 Answer. No, sir. There is a difference in the color of red rock and the heft of it.

Question 139. Do you know red rock in the bay as you pass by in the steamers?

Answer. Yes, sir.

Question 140. Is that the color?

Answer. No, sir.

Question 141. This piece marked Exhibit B, is that the color of the rock?

Answer. Those red spots are indications.

Question 142. You say that is a piece of cinnabar that is rich?

Answer. Yes, I call it very good rock.

Question 144. You judge of that merely from its color and appearance?

Answer. Yes, sir.

295 Question 143. What is the difference between that and red rock up here in the bay?

Answer. I don't know, sir; I never examined that.

Question 145. But you can tell its color as you pass it?

Answer. I think the cinnabar rock is solid, and I think that is not; I should judge so; this (Exhibit B) is solid, and pregnated with this cinnabar.

Question 146. But did you not say a little while ago that where it was soft and you could wet it, and so on, it was cinnabar?

Answer. I think you wet that now, and take a nail, and you can dig out this cinnabar.

Question 147. Is that so with cinnabar?

296 Answer. No, sir; some of it is harder than that, but you can take it where it is exposed and it is soft.

Question 148. All that is exposed you can soften and take it out?

Answer. All on the outside surface.

Question 149. Do you mean that by wetting it it sparkles in the sun—the quicksilver?

Answer. I don't know as it does. You can see that it contains cinnabar by its appearance.

Question 150. What effect does it have to wet it and expose it to the sun?

Answer. It shows brighter.

Question 151. Where you take this red rock and wet it, does it have the same appearance that wet cinnabar has?

Answer. No, sir.

(Signature waived by consent.)

297 *Deposition of J. Marsh.*

JOSHUA MARSH recalled by Mr. HEATH:

Question 1. About the year 1869, did you see Mr. McLaughlin, the defendant in this action, in company with Dr. Powell?

Answer. Yes, sir.

Question 2. Where?

Answer. At his office.

Question 3. Was there any conversation between Dr. Powell and Mr. McLaughlin with reference to the mineral character of the land in controversy?

Answer. Yes, sir.

Question 4. Repeat that conversation.

Answer. Dr. Powell stated to Mr. McLaughlin that this land was mineral land.

298 Question 5. What did Mr. McLaughlin say?

Answer. He brought the rock and showed it to him. He said if it was mineral land he had nothing to do with it.

Question 6. This conversation was in Mr. McLaughlin's office?

Answer. Yes, sir.

Question 7. Where?

Answer. Right opposite the land office, his old office, where it used to be, on Montgomery street.

Question 8. In what place, I mean?

Answer. In San Francisco. I could go to the building now. His office ain't there now.

Question 9. Was there anything said by Dr. Powell to the effect that he was going to apply for the land as mineral?

299 Answer. Yes, sir.

Question 10. What did he say?

Answer. He said he was going to apply for the land as mineral; that there was quicksilver on it.

Recross-examination by Mr. WISE:

Question 11. Do you say this was in 1869?

Answer. Yes, sir.

Question 12. How do you remember the year?

Answer. Well, I remember it the same as you would or anybody else; the same as we would remember this year.

Question 13. Is there any fact or circumstance by which you

300 can remember that it was the year 1869?

Answer. I was working on my ground there, and he was working on his. We took out rock at that time; I was digging—dug for him and he dug for me; changed off.

Question 14. I ask you to tell me how you can tell that it was exactly the year 1869 that you went to Mr. McLaughlin's office?

Question. We found this rich rock and took it down to this office.

Question 15. Where was his office?

Answer. I think it was on Montgomery street. The office was right opposite where the land office is now, up two flights of stairs.

Question 16. The land office is in Jackson street, is it not?

Answer. It was right opposite the land office anyway; I can go to the building now, where it was.

301 Question 17. Who was present when that conversation occurred?

Answer. Mr. McLaughlin, Dr. Powell, and myself was all that were present in the office.

Question 18. Nobody else?

Answer. No, sir; there was nobody there but us, to the best of my knowledge.

Question 19. Are you perfectly sure that this occurred in 1869?

Answer. Yes, to the best of my knowledge. We dug this rich rock out, and we took it down there.

Question 20. You are just as sure about that as you are about anything else?

Answer. I am; to the best of my knowledge it was 1869.

302 Question 21. And you are sure that in 1869 Powell told Mr. McLaughlin that he intended to take it up under the mineral law?

Answer. Yes, sir.

Question 22. You are perfectly sure that in the year 1869, in the spring of the year, that Powell told Mr. McLaughlin that he intended to take up this land as mineral land?

Answer. Yes; that he had taken up.

Question 23. Of that you are perfectly sure?

Answer. Yes, sir; to the best of my knowledge.

Question 24. Did he tell him that he intended to take it up under the laws of the United States?

Answer. That is what I understood; yes, sir.

303 Question 25. That he intended to take it up under the laws of the United States?

Answer. He worked it that way.

Question 26. Powell told him it was mineral land?

Answer. Yes, sir; he told him it was mineral land.

Mr. HEATH:

Question 27. Mr. Wise asks you if you are positively sure that it was in 1869. May it have been at another time than 1869, either immediately before or immediately after the year 1869?

Answer. It was about that time. I don't want to say positive, because we are all liable to mistakes. I am, and any one else I ever saw; but to the best of my knowledge it was about that time. It might have been a little before or a little after, but it was about that time.

(Signature waived by consent.)

304 *Deposition of I. T. Sherman.*

Examination-in-chief of ISAAC T. SHERMAN, by Mr. Heath:

Question 1. State your name, age, residence, and occupation.

Answer. Name, Isaac T. Sherman; age, forty-seven; occupation, farmer; place of residence, Walnut Creek, Contra Costa County.

Question 2. Do you know the land in controversy?

Answer. I do.

Question 3. Do you know the corners?

Answer. Yes; I think I do.

Question 4. State whether you have examined the land with reference to its mineral character.

Answer. I have some.

305 Question 5. When?

Answer. Some time this season—this present summer.

Question 6. State the extent of your examination, and what you found.

Answer. We found what we called cinnabar. We found this cinnabar in a good many places in this quarter that we was looking over.

Question 7. Did you examine in any place without finding cinnabar?

Answer. I don't know that we did. I believe not.

Question 8. To what depth did you dig?

Answer. Well, we dug down. I dug down in places where it had been dug before, in the bottom of holes.

Question 9. At about what depth?

306 Answer. Well, perhaps in places six or eight feet deep.

Question 10. As to the rock, did you find any cinnabar in the rock?

Answer. We did.

Question 11. Whereabouts?

Answer. We found it in Powell's place; found it in the rock there.

Question 12. State whether you examined each forty acres of the hundred and sixty.

Answer. I did.

Question 13. State if you found the cinnabar on each.

Answer. I did.

Question 14. State whether, in making your examinations in the holes, you went down below where it had been disturbed to find

307 the earth to take out cinnabar.

Answer. We did.

Question 15. In the open cut at the bottom, and also at the sides and end, what was the nature of the rock; mineral or other rock?

Answer. Mineral rock; all that I see about there, even the dirt.

Question 16. That rock that was placed solid in the bottom of the cut, and had not been disturbed, was that mineral, or did it contain quicksilver or not?

Answer. Yes, sir.

Cross-examination by Mr. WISE:

308 Question 17. When did you say you went up to examine this?

Answer. Some time past; I don't recollect the time exactly; this summer.

Question 18. You went up at Powell's request?

Answer. Well, he has been anxious for me to come up there for several years, and I went up this summer.

Question 19. You did go at his request?

Answer. Well, yes, sir; with his invitation.

Question 20. You went up there to examine it, in order to be a witness in this case?

Answer. Well, I don't know as I did.

Question 21. Did he not tell you that he had a case here, and that he wanted to call you as a witness?

Answer. He might have said something about it.

309 Question 22. Did he or not?

Answer. I think he might have talked that way.

Question 23. He might or might not. Did he ask you? State whether he did or not. Did he or not tell you that he wanted you to be a witness?

Answer. I am not sure whether he did or not.

Question 24. Did you not know, when you were examining this ground, as you say, that you were to be a witness?

Answer. No; I did not know I would be a witness.

Question 25. Did you not expect to be a witness?

Answer. I don't know as I did; no, sir.

Question 26. What is your business?

310 Answer. Farming, generally.

Question 27. Did you go up there out of mere curiosity to examine this land, and for no other purpose?

Answer. Yes; principally that, because I have been anxious to see the place for a long time.

Question 28. Do you own any mines?

Answer. No, sir.

Question 29. Did you ever have any experience as a miner?

Answer. Not a great deal.

Question 30. Did you ever have any experience in mining for quicksilver?

Answer. No, sir.

Question 31. Were you educated for a mineralogist?

Answer. No, sir.

311 Question 32. Were you educated for a geologist?

Answer. No, sir.

Question 33. Did you ever have any education that would fit you for an expert?

Answer. No, sir; I don't claim to be an expert.

Mr. WISE. I move to strike out all of the evidence of this witness, because he does not appear to be an expert.

Question 34. You say you found what you call cinnabar. Do you know whether it was cinnabar or not?

Answer. Well, it resembles all the cinnabar that I have heard of and seen in the country.

Question 35. You only judge from your eyes?

312 Answer. Yes, sir; I have not taken out any quicksilver.

Question 36. And you never saw any of it tested?

Answer. No.

Question 37. Why did you judge that it was quicksilver?

Answer. From the looks of the rock compared with other rocks that I seen been before.

Question 38. Is there anything in the color or weight, or appearance, or anything of that kind, which would enable you to describe it so that anybody would know it?

Answer. Well, it is a kind of reddish rock.

Question 39. Is it red that makes it cinnabar?

Answer. Generally; generally you will find some red about it.

Question 40. Is all red rock cinnabar?

313 Answer. No.

Question 41. Then how can you tell when you see a piece of red rock whether it is cinnabar or not?

Answer. Well, it is something different from a great many red rock.

Question 42. Is there anything different so that you can tell what it is?

Answer. Well, I don't know. It has a peculiar look.

Question 43. Is there anything peculiar about it that you can tell us so that we can know about it?

Answer. I think that I would know it when I saw it.

Question 44. But notwithstanding you would know it when you would see it, you cannot describe in words so that we could know it ourselves.

314 Answer. Well, I don't know as I could.

Question 45. Where were you born?

Answer. I was born in Massachusetts.

Question 46. When did you come to California?

Answer. I landed in California in 1852, in October.

Question 47. You say you found cinnabar in a good many places on this land?

Answer. Yes, sir.

Question 48. You only judged it was cinnabar by your eye, nothing else?

Answer. Yes, what I saw in it.

Question 49. What do you mean, Mr. Sherman, by cinnabar?

Answer. Well, it is a class of rock that contains quicksilver.

315 I suppose that is what is called cinnabar.

Question 50. You do not mean the naked quicksilver itself. You mean the rock that contains it?

Answer. Yes, sir.

Question 51. Then you say in one place you found cinnabar in rock. What do you mean by that?

Answer. Well, I meant a class of rock that cinnabar is in.

Question 52. Is cinnabar in a ledge, or is it found in ledges and scattered around in the ledge? Is it a rock by itself?

Answer. Well, what I see of it is in rock similar somewhat, to large boulders—bigger and smaller.

Question 53. You have never seen a ledge of it?

316 Answer. No, sir.

Question 54. All you have seen is boulders?

Answer. Yes, and in the dirt.

Question 55. You did not see any ledge up there?

Answer. Well, some folks would call it a ledge, but it was shattered rock.

Question 56. Did you see any continuous mass of rock that you took to be cinnabar rock up there, or was this rock that you took to be cinnabar rock scattered around in places?

Answer. Do you mean on this piece of ground?

Mr. HEATH:

Question 57. Anywhere on the hundred and sixty acres?

Answer. I didn't see anything that looked like a real ledge.

317 Mr. WISE:

Question 58. You say the rock at the bottom of the cut that you saw there was quicksilver rock?

Answer. Yes, sir; the same; what they call cinnabar.

Question 59. You judged of that simply by the looks, just the same as you did of the other?

Answer. Yes, sir.

Redirect examination by Mr. HEATH:

Question 60. Look at Exhibit B. Was the rock that you have been describing of the same class as Exhibit B, here shown you?

Mr. WISE. That is objected to, as the witness cannot say, except by analysis and comparison.

318 Answer. That looks like the same rock that I saw up there, or some of the same.

Mr. HEATH:

Question 61. All that rock that you call cinnabar was of the same class, was it?

Answer. I think so.

Question 62. Look at Exhibit A. The material that you called cinnabar, that you found in the dirt at the bottom of these holes, was it like that exhibited in A?

Answer. Yes, sir. I washed out some that looked just like that.

Question 63. It was of the same character?

Answer. Yes, sir.

Mr. WISE:

Question 64. You have no means of knowing that it was the same thing, except by the appearance and color?

319 Answer. By the looks. It was the same color as this.

Question 65. When you say what you got was like Exhibit A, was it in a liquid state like that?

Answer. That looks as if it had got some water in it.

Question 66. You mean, then, that what you saw was dry?

Answer. Not exactly dry. We washed it out and then poured the water out.

Question 67. You saw it without water?

Answer. Yes, sir.

Question 68. You say, then, it was without water when you saw it, and that it looked like this here (Exhibit A)?

Answer. Yes, sir; I suppose this was about the same.

320 Mr. HEATH:

Question 69. When it was in the water did it look like this in Exhibit A?

Answer. Yes, sir.

(Signature waived by consent.)

321 *Deposition of John Denkinger.*

Examination-in-chief of JOHN DENKINGER by Mr. HEATH:

Question 1. State your name, age, residence, and occupation.

Answer. Name, John Denkinger; age, forty-six; place of residence, Concord, Contra Costa County; occupation, farmer.

Question 2. How long have you been a farmer at Concord?

Answer. Since 1863.

Question 3. Do you know the land in controversy in this action?

Answer. Powell's land?

Question 4. Yes.

Answer. Yes, sir.

322 Question 5. Do you know the corners of the hundred and sixty?

Answer. Yes, sir; I do.

Question 6. State the quality of the soil and the vegetation that grows upon that land?

Answer. It is a kind of a reddish, rocky land—gravel, and one thing and another—most of it.

Question 7. And the vegetation?

Answer. The principal vegetation is squirrel-grass and poison oak.

Question 8. Is the squirrel-grass dwarfish or rank, small or large?

Answer. Small.

Question 9. Is there any ditch or anything of that kind upon that land?

Answer. Yes, sir.

323 Question 9½. Where does it come from, and to what point?

Answer. I think it starts up on the west side, I suppose, and runs down in an easterly direction, I think. I could not tell exactly which way it runs.

Question 10. How near the top of the hill on the land?

Answer. I think it starts above the land.

Question 11. I mean how near does it run to the hill?

Answer. It runs pretty tolerably high; I don't know exactly.

Question 12. How frequently during the winter season have you been upon that land of the doctor's?

Answer. Well, in the winter, I believe, I have only been there
324 once, some time ago. In the spring I have been passing through there.

Question 13. Is there any water in the stream that can supply that ditch with water?

(OBJ.—Objected to as irrelevant and immaterial.)

Answer. Yes, sir.

Question 14. To what extent?

Answer. I don't know.

Question 15. Sufficient for sluicing purposes?

Answer. I suppose it would be in the spring of the year or the winter.

Question 16. About what time in the fall do the rains come there that would supply that ditch with water?

Answer. Sometimes it comes in October or November.

325 Question 17. From the time it first comes until how late would there be a supply of water sufficient for mining?

Answer. I have seen a pretty good supply of water there as late as about the month of March.

Question 18. Have you seen water there in the creek as late as June?

Answer. In the creek I have watered my cattle there in August, in ordinary rainy seasons.

Question 19. Have you raised cattle and horses?

Answer. Yes, sir, some.

Question 20. Do you know the value of lands in that section of country for grazing and agricultural purposes as well as for grain purposes?

Answer. Yes, sir.

326 Question 21. How long have you been raising grain in that country?

Answer. Since 1865.

Question 22. Continuously since that time?

Answer. Yes, sir.

Question 23. Is there any grain land upon this hundred and sixty acres that is in dispute?

(OBJ.—Objected to as irrelevant and immaterial.)

Answer. Not any to pay for farming.

Question 24. What is the value of that land per acre for agricultural or grazing purposes?

(OBJ.—The same objection.)

Answer. I wouldn't want it for anything; but it might be
327 worth four bits an acre by selling big lots together.

Question 25. How much would you fix the value of this hundred and sixty at, as it is alone, for agricultural or grazing purposes?

Mr. WISE. I object to that, as the witness has not shown that he knows.

Answer. I don't think it is worth anything, that a man could make a living on it by agriculture or grazing. It would not be worth over two bits an acre, anyway, not to me.

Cross-examination by Mr. WISE:

Question 26. Where were you born?

328 Answer. Germany.

Question 27. When did you come to California?

Answer. 1857.

Question 28. What was your business before you came to California?

Answer. Farming in the Eastern States.

Question 29. How old were you when you came to California?

Answer. Twenty-six years.

Question 30. Have you been farming since you were here?

Answer. Yes, sir.

Question 31. Nothing else?

Answer. Yes, sir.

Question 32. Where?

329 Answer. In Napa Valley, San José Valley, and up here.

Question 33. How far do you live from this land?

Answer. About six miles.

Question 34. When did you first become acquainted with this land?

Answer. I don't know; '64 or '5. I got some wood up there.

Question 35. Is there any wood on this land?

Answer. I didn't haul it from there. Yes, there is wood on there.

Question 36. Good wood?

Answer. Well, I suppose so.

Question 37. What is the size of the trees?

Answer. Small and large.

Question 38. What kind of wood?

Answer. Generally this oak.

330 Question 39. A good deal of it?

Answer. Well, I don't know. In some places. There ain't a great deal, I believe.

Question 40. Is it in the gulches or on the hills?

Answer. No; scattered all over.

Question 41. Have you known Powell very intimately for a long time?

Answer. Yes, sir; I have been acquainted with him for some time.

Question 42. How does he make his living there?

Answer. Going out harvesting, working round, sometimes shearing sheep, and one thing and another, most of the time, I suppose.

Question 43. Has he got any stock?

Answer. No, sir; I guess not.

331 Question 44. Is there any grazing on this land at all?

Answer. Not much. In the spring of the year, for a couple of months' there is a little squirrel-grass on it.

Question 45. Nothing more?

Answer. That is all I see.

Question 46. Is there a good deal of mining in that section of the country?

Answer. I never seen much. I have heard of their prospecting round there, different parties.

Question 47. You have never heard of any profitable working of mines around there, have you?

(Objected to as irrelevant and immaterial.)

Answer. I understood they worked the old quicksilver mines
332 profitably. I don't know what the rest done.

Question 48. How did you come to go up there, when you went there to examine this ditch?

Answer. I went up there just for curiosity to see the old mines, and I see the water running there—a year ago last spring.

Question 49. When you got there, for curiosity, you went to Powell's house, did you not?

Answer. Oh, yes, sir.

Question 50. Didn't he ask you to come up?

Answer. No, sir.

Question 51. Did you not go there for the express purpose of being a witness here?

Answer. No, sir.

Question 52. When was this you went there?

Answer. About two years ago last summer.

333 Question 53. Where did they get the water that runs in this ditch from?

Answer. There is a big spring above there somewhere; I don't know exactly where.

Question 54. In Monte Diablo?

Answer. I don't know exactly where. I know the water runs down there.

(Signature waived by consent.)

334 *Deposition of John Grummett.*

Examination-in-chief of JOHN GRUMMETT by Mr. HEATH:

Question 1. What is your name, age, residence, and occupation?

Answer. Name, John Grummett; age, fifty-one; place of residence, I live in Stanislaus County; I am a mason and bricklayer.

Question 2. What experience, if any, have you had in mining?

Answer. Well, I have had considerable, for the last two years.

Question 3. State, as briefly as you can, what the experience has been.

Answer. In what kind of mining; do you refer to any kind?

Question 4. Anything. State what you have done, and what you have seen.

335 Answer. I have never worked much in a mine myself; I don't work in the mine; I have been in them in the tunnels of the shaft; I frequently put up their works for retorting and crushing rock, and such things; my business is setting the works for working the rocks.

Question 5. What experience have you had, sir, setting the retorts. &c., for working quicksilver rock?

Answer. I set a retort about two years ago for a company.

Question 6. Where?

Answer. It is on what we call the middle fork of Oristimba Creek, in Stanislaus County.

Question 7. How long were you at work at that mine?

Answer. Well, I was putting up the retort and staid there
336 with them retorting out some rock with a hand retort; well, I was there about three weeks.

Question 8. Were they retorting about three weeks?

Answer. After I built the retort I took up a mine of my own. One of these men showed me a mine, and I went and took it up and went to work in the mine; and there, when I came down, I saw them retorting the quicksilver out of the rock.

Question 9. How long were you there while they were retorting the quicksilver?

Answer. I was there three weeks; perhaps a little more.

Question 10. Did you build any other retorts?

Answer. I never built a retort for any other company but that.

337 Question 11. What other quicksilver have you seen retorted than at this place?

Answer. In these little hand retorts that are packed around for prospecting. If we find a rock that we think is rich we put it in these small retorts and build a fire under it, and ascertain if it has quicksilver in it.

Question 12. Have you had considerable experience in that kind of mining?

Answer. Well, I have helped do it with other men, and by myself considerably.

Question 13. Then are you competent to determine the percentage of quicksilver ore in a rock by an examination?

338 (OBJ.—Mr. WISE. I object to the question as leading and irresponsive. The witness's opinion of his own capacity is not evidence. It calls for the opinion of the witness instead of facts, and he must show the facts to make him competent.)

Answer. Yes, sir; by looking at it.

Mr. HEATH:

Question 14. By looking at it?

Answer. I know it by looking at it, from my experience from having retorted a similar kind of rock.

Question 15. Now I will ask you a little further as to your experience—as to the length of time that you have retorted in prospecting during the past few years?

Answer. That would be very hard for me to tell, the length of time.

Question 16. Approximate it. I don't expect you to tell within a day or week.

339 Answer. Well, not over two months that I have been there myself. I have had men at work, though.

Question 17. Do you know the land in dispute in this action?

Answer. Yes, sir.

Question 18. How long have you known it?

Answer. About two years, as near as I can remember.

Question 19. Have you examined that land with a view of ascertaining its character as to minerals?

Answer. I have.

(OBJ.—Mr. WISE. I object. The witness does not show that he is a competent witness and expert.)

340 Answer. I discovered some rock—quicksilver rock. I discovered it in the clay, the earth, what we term cinnabar. I washed it out.

Mr. HEATH:

Question 20. State in how many places upon that land you prospected and washed out cinnabar.

Answer. Well, betwixt twelve and perhaps fifteen places; might have been twenty.

Question 21. On each forty acres of the hundred and sixty?

Answer. Yes, sir.

Question 22. Where did you find that, in rock?

Answer. I found it in different places on the land.

Question 23. Did you see an open cut there?

Answer. Yes, sir.

Question 24. How long is that open cut?

341 Answer. The open cut is about fifty feet, I should think.

Question 25. What is the character of the rock in that open cut?

Answer. That open cut, there isn't much rock there. There is a track there.

Question 26. I mean at the sides and at the head of it?

Answer. There is some boulders lying in at the sides of it.

Question 27. And at the head?

Answer. At the head there is quite a large amount of boulders; we call it croppings; that is, cropped out.

Question 28. State whether those boulders at the side and at the head contain mineral.

342 (OBJ.—Mr. WISE. I object. The witness does not show that he knows or how he knows, or that he is competent to testify.)

Mr. HEATH:

Question 29. State whether you know, from the appearance of the rock, that it contains quicksilver.

Answer. I have retorted similar rock by hand, and by a retort that I set for other parties.

Question 30. Did you examine that rock with a view of determining its percentage of quicksilver?

Answer. I did.

Question 31. What per cent. will that rock go in that open cut; that that you saw at the head of the open cut?

Answer. I could not say the per cent.

343 Question 32. About; as near as you can approximate it.

Answer. Well, I should think about three per cent.

Question 33. Examine Exhibit B. How does that compare with the rock that you saw at the head of the open cut, and in the boulders at the side?

Answer. That is about the same placer rock.

Question 34. How would it compare in richness and value?

Answer. About the same thing. I broke off some rock in different places. I have got it here in my pocket for specimens that I wanted to take home with me (produces).

Question 35. In how many other places did you find boulders of rock containing quicksilver on that place, other than at the open cut?

344 Answer. In a great many places. I don't know how many different places. It was in the small rock, not in these large boulders.

Question 36. In this earth what percentage is quicksilver?

Answer. That I could not say.

Question 37. Approximate it. About how much would you say?

Answer. I could not set it at all.

Question 38. Have you ever seen any earth containing quicksilver worked?

Answer. I have, but it was shoveled in with the rock.

Question 39. You have never seen it worked in any other way?

Answer. No, sir; I have never retorted the clay by itself.

Question 40. In taking this out did you dig it out yourself,
345 or did you take what was scattered about on the surface?

Answer. I took it out from what appeared to be a solid bank. The clay appeared to be solid, very hard to break.

Question 41. The specimen of rocks that you took out and broke off, did you take them out of the rock in the solid earth, or did you take that that was on top?

Answer. There was one place that I dug down about eighteen inches and struck a large rock, and took it off from the sides of what I uncovered of it. I dug to some perhaps foot and a half, two feet square, and this rock appeared. It appeared to be a very solid rock by striking of it.

Question 42. In how many places did you come to rocks that set up in the same shape?

Answer. Do you mean right at place?

346 Question 43. At different places on the land?

Answer. I didn't see any solid rock like that appeared to be in the other places.

Question 44. Did you examine the amount of work done by Dr. Powell on that land in dispute?

(OBJ.—Objected to as irrelevant and immaterial.)

Answer. I did, at this open cut.

Question 45. State how much is the value of the mining improvements made upon that land.

(OBJ.—Same objection.)

Answer. Do you mean in laying the track——

Question 46. (Interrupting.) I mean in digging out the holes,
347 in laying the track, in running tunnels, and the ditch that runs up there for carrying water, and everything. What is the value of the work and labor?

(OBJ.—The same objection.)

Answer. Well, in the neighborhood of a thousand dollars; about a thousand dollars.

Cross-examination by Mr. WISE:

Question 47. Where were you raised, Mr. Grummett?

Answer. I was raised in Canada.

Question 48. How long have you been in California; about how long?

Answer. I have been here since the spring of 1862.

348 Question 49. Were you educated for or did you have any experience as a miner before you came to California?

Answer. No, sir.

Question 50. You have never studied mining at all?

Answer. No, sir.

Question 51. You only knew from your experience in the last two years?

Answer. Yes, sir.

Question 52. And your experience has been, more than anything else, around mines as a mason putting up retorts?

Answer. No; I have been prospecting for mines.

Question 53. All the knowledge you have, then, is gained from prospecting for mines?

Answer. Yes, sir.

349 Question 54. Where did you prospect?

Answer. I prospected on the Oustamba; in that region of the country.

Question 55. You never have worked in the mines at all?

Answer. No, sir; I don't work in the mines at all. My mining I have done; I have hired done.

Question 56. How came you to be in this neighborhood if you live in Stanislaus County?

Answer. I came down to examine some coal mines at Nortonville.

Question 57. How did you make Powell's acquaintance?

Answer. He was shearing sheep up in the mountains close by where I live. I got acquainted with him by his being at work there.

350 Question 58. Did you examine his place with reference to being a witness here?

Answer. No, sir.

Question 59. When did you examine it?

Answer. I examined it first about two years ago. I was examining of it for my own use and benefit—for my own satisfaction.

Question 60. Did you discover anywhere upon this land any mineral ledge?

Answer. No, sir.

Question 61. All you saw was these little pieces of rock and this earth and clay that you think contained quicksilver?

Answer. The large rock was in this cut; the small rock was in different places over the land.

Question 62. That large rock is a loose rock embedded in the earth, is it not?

351 Answer. I don't know, sir.

Question 63. You only judge that the clay and the large rock and small rock contain quicksilver from its color and appearance?

Answer. No, sir; I judge from what I have retorted out.

Question 64. Did you retort any of this rock?

Answer. No, sir.

Question 65. Then you only judge of this by its color and appearance?

Answer. Yes, sir; that is all.

Question 66. Why did you not retort this rock?

Answer. I am going to do it yet. I have got this rock for that purpose.

352 Question 67. How long since you were asked to come here and be a witness?

Answer. Well, probably within ten days or two weeks.

Question 68. Powell asked you to come, did he not?

Answer. Yes; he subpœnaed me to come.

Question 69. You have had plenty of time to retort this rock you have got, have you not?

Answer. No, sir; I didn't take out this rock at that time; I have taken this out since.

Question 70. When did you take that rock out?

Answer. Last week some time.

Question 71. You have had plenty of time to retort that, have you not?

Answer. I have had time enough if I had the means to do it.

353 Question 72. As you knew you were coming here to testify as to the mineral character of that land, and you have had plenty of time, why didn't you make the retort?

Answer. I had no hand retort down here to do it with—to retort it. I retort with a hand retort.

Question 73. Where did you come from when you came here to testify?

Answer. I came from Stanislaus County.

Question 74. You came from Stanislaus County here?

Answer. Yes, sir.

Question 75. Did you come from Stanislaus County here to testify?

Answer. No, sir; I didn't understand you.

Question 76. Where did you come from?

354 Answer. From Mount Diablo.

Question 77. Did you have a retort there?

Answer. No, sir.

Question 78. Was there a hand retort there that you could have got?

Answer. No, sir.

Question 79. Then you have not examined it at all?

Answer. No, sir; I intend to take it home with me.

Question 80. How much does a hand retort cost?

(OBJ.—Objected to as irrelevant and immaterial.)

Answer. There is different prices, according to size.

Question 81. Name the prices.

Answer. From five dollars to fifty.

355 Question 82. Did you tell Powell that you could retort it if you had a retort?

Answer. No, sir. I didn't intend to let him know how rich it was.

Question 83. You say you washed it out in from twelve to twenty places on each forty acres; did you mean to say that, or that you washed it out in from twelve to twenty places on the whole place?

Answer. I meant the whole places. Twelve to twenty altogether on the whole quarter section.

Question 84. You say you saw an open cut in the rock; what is that cut through; is it mostly rock?

Answer. Well, it is through the rock and clay.

Question 85. Is that rock solid rock or loose stone in the earth?

Answer. It appears to be boulders in the dirt.

356 Question 86. When you say you judge it would contain three per cent. of quicksilver, you only judge that from your eye?

Answer. I judged it from retorting similar rock.

Question 87. I mean to say, on this particular occasion when you examined this rock, you were only using your eye to judge by?

Answer. Yes, sir.

Question 88. You made no other examination than with your eye?

Answer. Only by my eye.

Question 89. And because of its appearance you think it would contain three per cent.?

Answer. I think it would; yes, sir.

Question 90. This cut, it is all caved in?

357 Answer. The head works; I could not see the end of it. A part of it has been caved in. It is fresh work, but where the cave lays it is not so fresh; looks like it has been weather-beaten by the rain. But there is fresh works there.

Question 91. You say that the value of the works that you say there was a thousand dollars?

Answer. Yes, sir; about that.

Question 92. What do you mean by that; do you mean to say they are worth a thousand dollars now?

Answer. I think it would cost a thousand dollars to do the work that was done.

Question 93. You mean, then, that it would cost a thousand dollars to do the amount of work that was done there; but you do not
358 mean to say that it is worth a thousand dollars now?

Answer. Well, I don't know.

Question 94. Can you swear that they are worth a cent for mining purposes, as they are now?

Answer. I would give five times that if I had the money for the mine.

Question 95. You testified that the value was a thousand dollars. I want to know whether you mean that that is whaty they cost, or that that is what they are worth now?

Answer. I think that is what they cost.

Question 96. Now, I ask this question: Can you swear that the works up there are worth, not what they cost, but are they now worth any sum whatever for mining purposes?

359 Answer. Yes, sir.

Question 97. How much can you swear they are worth? I am not speaking about their cost, but what they are really intrinsically worth for mining purposes, at the present time?

Answer. Well, that cut itself, according to the prospects in the head of it, I should judge——

Question 98. (Interrupting.) I am not asking for your opinion, but I am asking what you know?

Answer. I have got to have my opinion; I can't swear to yours.

Question 99. I am not asking your opinion, but what you know. If I was asking you what you know about stone work, your opinion would be good; but as to mining, I don't think your opinion would be of so much value. I am asking you if those works would be worth,
360 for mining purposes, a cent?

Answer. They would be worth to me more than a thousand dollars.

Mr. HEATH:

Question 100. Would it not be necessary to put the works on that are already there if you were going to work the mine?

Answer. Yes, sir.

Question 101. Wouldn't that ditch be a valuable improvement for working the mine?

Answer. Yes, sir; for working the cinnabar.

Mr. WISE:

Question 102. You say you found Powell shearing sheep?

Answer. Yes, sir.

Question 103. A man who has one hundred and sixty acres of land, of which the clay, and earth, and rock, and everything are filled with
361 quicksilver, as this land is, in your opinion, don't you think that he could make a great deal better living by taking the earth down to the spring and washing it out than he could by shearing sheep?

(OBJ.—Mr. HEATH. I object to that as immaterial and impertinent, and not responsive to any question in the direct examination.)

Answer. I think I could.

Mr. WISE:

Question 104. Don't you think he could?

Answer. I don't know what he could do.

Question 105. How long have you had experience in that section of the country—Monte Diablo.

Answer. About two years.

Mr. HEATH:

Question 106. If a man has no money to put up retorts, and the title to his land is in dispute, and he can't procure no capital to de-
362 velop his mine on account of his title being in dispute, can he make any money out of a mine.

Answer. He has told me that that is the reason he don't go ahead with it.

(OBJ.—Mr. WISE. I object to that, and move to strike it out as hearsay.)

(Signature waived by consent.)

Here a continuance is taken until Monday, July 2, at nine o'clock a. m.

363 MONDAY, *July* 2, 1877.

Further continued by consent until two o'clock p. m.

AFTERNOON.

Present, Mr. Wise, of counsel for defendants; Mr. Heath, of counsel for complainant.

Deposition of John Donner.

Examination-in-chief of JOHN DONNER, Sr., by Mr. HEATH:

Question 1. State your name, age, residence, and occupation.

Answer. Name, John Donner; age, fifty; residence, Clayton, Contra Costa County; occupation, at present I am ranching.

364 Question 2. What experience, if any, have you had in mining?

Answer. Since I have been there I have had more or less to do with it, backwards and forwards, you might say, for seven or eight years.

Question 3. What class of mining?

Answer. Different classes; copper, silver, quicksilver.

Question 4. During the last seven years, how long have you mined for quicksilver, taking the whole time together?

Answer. I had a pretty good run; I had a run of some six or seven months the first run I had, and I have worked back and forward at it ever since that time; perhaps it would make two years, and perhaps a year and a half altogether.

365 Question 5. Have you worked in mines when they were retorting quicksilver?

Answer. I did work some for Mr. Oglesby when they were retorting. I don't know as you would call it mining. I was there; I worked on top of the ground the biggest part of the time. I worked back and forward; sometimes teamed a little—a very little teaming I done.

Question 6. Are you acquainted with the northeast quarter of section 29, township 1 north, of range of 1 east, Mount Diablo base and meridian?

Answer. Well, yes, sir; I am.

Question 7. How long have you known the land?

Answer. I have known that land ever since 1863. I had a chance to buy the improvements of it at that time.

366 Question 8. State the character of the land; that is, its surface.

Answer. The character of the land; well, it is what I would call a rough country in there, to make the best of it.

Question 9. Hilly?

Answer. Yes, sir; all that country through there is what I would claim to be mountainous; a rough country. That would come in with all the rest.

Question 10. State the depth of soil.

Answer. Well, in places there is very little soil, when you come to the soil part. Of course, in places there is more.

Question 11. What is the vegetation?

Answer. Well, now there hain't a great deal there of any kind. Of course there is in a very heavy winter, or something like that,
367 of course we have more of it.

Mr. WISE:

Question 12. What do you mean by a heavy winter?

Answer. Heavy rains. It takes a heap of rain to produce vegetation on that kind of soil.

Mr. HEATH:

Question 13. What minerals, if any, are there on the land?

(Question objected to, and withdrawn.)

Question 14. Do you know whether there are any minerals of any kind upon that land?

Answer. Well; yes, sir.

Question 15. What minerals are there upon and within that land?

(OBJ.—Mr. WISE. I object to that, because it is calling for the opinion of the witness instead of facts, and the witness does not
368 show that he is competent as an expert to give an opinion.)

Answer. Well, we call it quicksilver, and, undoubtedly it is, from all the experience that I have had on that ground.

Mr. HEATH:

Question 16. Have you seen any ores similar to that upon that land retorted or reduced?

(OBJ.—Mr. WISE. I object to the question because the witness does not show that he is competent to determine what is similar ore.)

Answer. Well, the ore is about the same as there is on what we call the Welch claim right south, of it. It is about the same quality of rock.

Mr. HEATH:

Question 17. Have you seen that retorted?

369 Answer. Yes, sir; on the Welch claim I have seen it retorted.

Question 18. What examination, if any, have you made of the land in controversy with reference to its mineral character?

Answer. Well, as far as I have prospected that ground——

Question 19. (Interrupting.) What examination, how much prospecting have you done? That is the question; or what have you done?

Answer. I don't know as I understand the question.

Question 20. What examination have you made? Have you been there frequently?

Answer. Yes, sir; I have.

Question 21. What have you done when you were there?

370 Answer. Well, I helped to mine some little. I was there one or two occasions when they was mining.

Question 22. When did you make the last examination?

Answer. The last examination I was called on a short time ago to come up there.

Question 23. When, what day?

Answer. Last Saturday.

Question 24. What did you do on Saturday, or what did you do when you made the examination?

Answer. I examined the ground, as near as I knew how, and as well as I knew how, the rock, in order to procure something like ore, and also took a pan and panned it out. That was my main object in going there.

Question 25. What did you do? Did you take any of the ore?

371 Answer. I did.

Question 26. What did you do with it?

Answer. I am having it assayed.

Question 27. Where did you take it?

Answer. I took it to the assayer's office.

Question 28. Whose?

Answer. I don't recollect his name.

Question 29. Mr. Strong?

Answer. Strong; that is the name.

Question 30. When did you take the rock to the assayer's office?

Answer. I took it there this morning.

Question 31. Did you take anything else but the rock there?

Answer. I took some there that I panned out in a pan.

372 Question 32. That was cinnabar that you panned out?

Answer. Yes, sir; that is a common thing on that ground. I can go right down in the creek most anywhere and pan it out, which I have done years ago. But I done it for myself; wanted some quicksilver or cinnabar to test the rock there, and went there and got it.

Question 33. You took to Mr. Strong to-day some rock to be assayed?

Answer. Yes, sir.

Question 34. Did that rock come off of the land in controversy?

Answer. Yes sir; I took that out myself.

Question 35. Did you bring it down yourself?

Answer. Yes, sir.

Question 36. And delivered it to Mr. Strong yourself?

373 Answer. I did.

Question 37. How did that rock you took to Mr. Strong compare with other rock in sight as to its being a fair average?

Answer. Well, I don't know but what it was about a fair average, and perhaps a little better. It is pretty hard for a man to get the best of the rock. Sometimes he thinks he has got the best of it when he hasn't got it.

Question 38. Did you aim to get a fair average?

Answer. I did; I aimed to——

Question 39. (Interrupting.) Do you think you got only a fair average?

Answer. I do; I don't think I got any more from the fact that I didn't like the pains that I have there afore.

374 Question 40. You say you panned some cinnabar out?

Answer. I did, sir.

Question 41. What did you do with that? Did you take that to be assayed?

Answer. No, sir; (produces a bottle).

Question 42. Have you taken any other rock than this that you took off from Dr. Powell's ground to Mr. Strong to be assayed?

Answer. I did not, sir.

Question 43. When did you deliver that rock to him for assay?

Answer. About nine o'clock this morning, perhaps ten; I don't know.

Question 44. How much rock is there in sight upon that land?

Answer. Do you mean anything like rock that we call cinnabar rock?

375 Question 45. Yes; rock containing cinnabar.

Answer. That would be pretty hard for a man to tell. There is an immense bunch of it there, and so far as I have been down on it, and have seen anybody go down on it, it still goes so.

Question 46. State whether you have seen mining done upon that land of Powell's, or the land in controversy.

Answer. I have seen him and others mining there; but it has been—I don't know but what it has been pretty nearly two years. I passed through there one day, and found him and two other men mining.

Question 47. Is there a ditch upon that land?

Answer. There is.

Question 48. Have you seen water in that ditch?

376 Answer. I have.

Question 49. How near the top of the highest point of land is that ditch? How near the top of the hill does it run along on the side toward Powell's house?

Answer. Well, it somehow slips my mind; but it must run—well, I might say, half-way. I don't exactly recollect about it, and I have been there ever so often.

Question 50. State if there is a large body of cinnabar or quicksilver in the surface of the earth below that ditch that could be washed from the ditch.

(OBJ.—Mr. WISE. I object to that, because it is calling for the opinion of the witness, and he has not shown that he is competent to testify.)

377 Answer. Well, I don't know how much there would be there; but you can wash any amount of it. I won't say how much or how little, but just from what little experience I have had with a pan, anywhere in that creek, I can find it, but I wouldn't say how much, for I don't know; I have no idea.

Mr. HEATH:

Question 51. Have you tried the cinnabar in the surface there, to know that it was cinnabar?

(OBJ.—The same objection.)

Answer. Yes, sir.

Question 52. What trial did you make?

Answer. I have got a little hand-retort there. That is how I came to get the quicksilver for my own use. If you take a little hand-retort and heat it in a furnace you can get a vial of quicksilver. When you wash it right down it takes but little of that cinnabar to get a vial of mercury.

378 Question 53. Then do I understand you to say that you have reduced the cinnabar taken from the surface earth on the land in controversy and obtained therefrom quicksilver?

Answer. Yes, sir; I have.

Question 54. Then you knew it was quick-silver and cinnabar?

Answer. That is the way it proved itself, and anybody can do that that knows anything about mining at all, on any of that ground there; I don't care in which direction you go.

Cross-examination by Mr. WISE:

Question 55. Whereabouts did you mine?

Answer. I have got a mine of my own.

379 Question 56. Whereabouts?

Answer. On section 25.

Question 57. In that district?

Answer. Yes, sir.

Question 58. You have mined nowhere else?

Answer. Nowhere else.

Question 59. Do you mean to say that you have followed mining continuously seven or eight years?

Answer. In all I suppose it would make about one year, something like that. But I have a mine of my own, and when I am called on to work for anybody else of course I go. In the last few years I have had very little to do with it, except that I keep myself posted.

Question 60. What is your business?

380 Answer. Ranching.

Question 61. You have been ranching all that time?

Answer. Yes, sir.

Question 62. Making a living at it?

Answer. Yes, sir; with the exception of this year.

Question 63. Did you ever make any money at mining?

Answer. I made it, but I never got it.

Question 64. You mean to say you worked for other persons by the day?

Answer. Yes, sir.

Question 65. For whom did you work?

Answer. Mr. Oglesby, for one.

Question 66. How long did you work for Oglesby?

381 Answer. I don't know exactly how long I worked for him. But I thought it was a heap of money for a poor man to lose.

Question 67. How long did you work for him?

Answer. I guess one month or two months.

Question 68. You did not get paid?

Answer. I got paid what the rest did.

Question 69. He owed you money when he left?

Answer. I claimed it, yes, sir.

Question 70. The mine did not pay expenses?

Answer. We supposed it did.

Question 71. He said it didn't?

(OBJ.—Objected to as hearsay.)

Answer. He said it did.

382 Question 72. He stopped working the mine, owing a great many men that never got their money?

Answer. Of course he did. We supposed he had the money, though.

Question 73. In what capacity have you worked during the year that you have been working at mining?

Answer. The last year I have done but very little of it.

Question 74. You say you have worked altogether about one year out of seven or eight?

Answer. Yes, sir; about that.

Question 75. In what capacity did you work in the mines during that one year out of seven or eight?

Answer. I was working for myself part of the time. I worked under ground when I worked for myself.

383 Question 76. What were you doing for yourself when you were working in the mine?

Answer. I was prospecting for silver and copper, that is, that was part of my work.

Question 77. During all the time that you worked for yourself, is that what you did?

Answer. No, sir.

Question 78. What else did you do while you were working for yourself?

Answer. While I was working on my own claim?

Question 79. Yes.

Answer. I don't understand you. Of course when I was working for myself I worked for myself.

Question 80. What did your work consist of?

384 Answer. I was working under ground.

Question 81. Your work, then, was running a tunnel?

Answer. Yes, sir.

Question 82. When you were working for other people, what were you doing?

Answer. Part of the time I was under ground, and part of the time I was running a tunnel. I was at work under ground principally; the balance of the time in different claims.

Question 83. When you were under ground at work, what were you doing?

Answer. Running a tunnel or shaft.

Question 84. Then all of your mining has consisted of prospecting and running tunnels and shafts?

Answer. Yes, sir.

385 Question 85. The whole of it has consisted of that?

Answer. Yes, sir.

Question 86. You say you went there last Saturday. At whose request did you go?

Answer. Dr. Powell's.

Question 87. He is the man who is living on it?

Answer. Yes, sir.

Question 88. You went there to examine it in order to testify here?

Answer. Yes, sir.

Question 89. Did you go to such places as he asked you to?

Answer. I had just such ground picked as I was acquainted with.

Question 90. Did he point out the places to you?

386 Answer. I don't know as he exactly did, because he couldn't point out any places which I didn't know. I knew where I could get rock. He went with me. We went together.

Question 91. Is there a ledge of quicksilver there, or are the rock separate?

Answer. I could not tell that. There are rock there, and you can't hardly tell; at least, I can't. They are neither separate or together. You can dig under ground, and you will find earth right in between the rock, in the crevices, which is very rich.

Question 92. How do you know it is rich?

Answer. I panned it out.

Question 93. Panned out the quicksilver?

Answer. The sulphurets of quicksilver.

Question 94. Then you had to retort them?

387 Answer. I told you I did retort some of that; but not that I got the other day.

Question 95. In all of your retorting, how much did you retort?

Answer. I never had occasion to use much. I suppose an ounce vial is all I retorted. That is what I would get out of one batch, or perhaps a half of one. Of course, I panned out the refuse of it, and then retorted the balance.

Question 96. You say the ore on this land is the same as the ore in the Welch claim?

Answer. I think it is, myself; I see no difference.

Question 97. You judge that merely by your eye?

388 Answer. Yes, sir, you can't tell the rock apart. I don't see but what one is as good as the other, and I believe I have found as good rock on one side of the gulch as the other.

Question 98. Have you been educated a miner?

Answer. No, sir.

Question 99. Or a mineralogist?

Answer. No, sir.

Question 100. Or a geologist?

Answer. No, sir.

Question 101. Where were you born?

Answer. I was born in Ohio.

Question 102. You know the different ores in which metals appear, in different classes of rocks?

Answer. I hav'n't got that far along. I only know from what I see. That is the way a great many of these rich mines have been found, by a practical miner.

389 Question 103. Do you know what a segregation is?

Answer. No, sir.

Question 104. You know nothing of those mining terms?

Answer. No, sir; nothing of that kind particularly.

Question 105. You say you took a piece of rock to an assayer's office; where did you get that rock?

Answer. I dug it—about half of it—right out of what you would call a bed-rock; that is, a boulder, and I knocked another piece off of another boulder, and kind of broke them up and put them in a box, and brought them down here.

Question 106. What do you mean by a boulder?

390 Answer. You claim that I am no miner. I don't know as I would know. It is a rock that is sometimes as big as half of this house. Sometimes they are very small. The boulder that I got one piece of would weigh, perhaps, about fifty pounds; and the other, of course, I could not tell, because the bigger part of it was under ground.

Question 107. But they were separate pieces of rock?

Answer. Yes, sir; and one a very large rock. The rock in the ground suited me better than the other, but I thought I would make an average selection.

Question 108. You say you have got a mining claim. Where?

Answer. I mine on 25 once in awhile.

Question 109. What is this land in controversy on?

Answer. I don't understand you.

391 Question 110. You say yours is on 25; what section is this land on?

Answer. This is on 29.

Question 111. How far from yours?

Answer. Well, I don't know exactly. I guess it would make it two mile and a half by the lines.

Question 112. How long have you owned yours?

(OBJ.—Objected to as irrelevant and not proper cross-examination.)

Answer. I located there in 1863.

Question 113. Is yours quicksilver, or silver, or what?

Answer. We claim there is silver there.

Question 114. Do you claim there is quicksilver there, too?

392 Answer. I don't know exactly as there is quicksilver. I never prospected there for quicksilver. The quicksilver seems to be off that way further. They say there is quicksilver there, too, although I never prospected for quicksilver.

Question 115. Has your claim ever been profitable?

(OBJ.—The same objection.)

Answer. No, sir.

Question 116. You say you delivered this to Mr. Strong. Where is Mr. Strong's place?

Answer. I can't exactly tell you the numbers.

Question 117. What street is it on?

Answer. I don't know as I could tell until I go to it.

Question 118. Do you know what city it is in?

393 Answer. Well, I can come pretty near it, yes, sir.

Question 119. Come as near as you can.

Answer. We generally call it San Francisco.

Question 120. Did you ever see Mr. Strong before?

Answer. I did not, sir.

Question 121. Who carried you there?

Answer. Dr. Powell showed me the way there, after having a little hunt for the man.

Question 122. You say that the most you have got from reducing rock up there—cinnabar—from extracting quicksilver from the cinnabar, was not over an ounce altogether?

Answer. Well, I judged there was that, or more—an ounce

394 vial, and perhaps more; perhaps one-half full like that (referring to Exhibit A).

(Signature waived by consent.)

395 *Deposition of W. L. Strong.*

Examination-in-chief of W. L. STRONG.

By Mr. HEATH:

Question 1. State your name, age, residence, and occupation.

Answer. Name, W. L. Strong; age, I think fifty-four, if I am not mistaken in the date; occupation, assayer, tester of ores; place of residence, San Francisco.

Question 2. Do you know John Donnor?

Answer. I know him from the acquaintance I have had to-day.

Question 3. Never saw him before?

Answer. I don't think I ever—I never had any acquaintance with him before.

Question 4. Is this gentleman who was just examined the man?

396 Answer. Yes, sir.

Question 5. State whether he gave you some ores to-day to be tested.
Answer. He did.
Question 6. What were they?
Answer. Cinnabar ore.
Question 7. State whether he ever gave you any before.
Answer. He did not.
Question 8. Did you assay the ore that he gave you to-day?
Answer. Yes, sir.
Question 9. State how much it paid per cent.
(Question objected to and withdrawn.)

397 Question 10. You say your business is assayer and tester of ores. How long have you been engaged in that business?

Answer. I cannot tell the exact date, but it has been my principal business for fifteen—I should think it was fifteen—years, perhaps.

Question 11. During that time what has been your experience in testing or assaying quicksilver ores? To what extent have you assayed or tested quicksilver ores?

Answer. Well, I have tested a great deal—a great deal of quicksilver ore.

Question 12. How long have you been engaged in assaying quicksilver ores?

Answer. More or less since I have been in business.

Question 13. Made a great many separate assays?

398 Answer. Yes, sir.

Question 14. Now, Mr. Strong, you will state what per cent. of quicksilver the ore assayed to-day for Mr. Donner amounted to?

(Objected to on the ground that witness has not shown that he is competent to testify.)

Answer. The ore that was presented to me by Mr. Donner to-day—the result was six and eight-tenths per cent. quicksilver.

Question 15. Did you make out a certificate of assay?

Answer. (Produces a paper.) My brother made this out.

Question 16. Do you know that this is correct?

Answer. I know that this is correct.

399 (Ex. C.—Complainant here offers the paper last above referred to in evidence, marked Complainant's Exhibit C.

Mr. WISE. I object to the introduction of the paper in evidence, on the ground that the witness does not show that he is competent to testify.)

Mr. HEATH:

Question 17. Describe your education as assayer or tester—education and experience.

Answer. From what point?

Question 18. From the commencement.

Answer. Well, I have been learning the business for quite a number of years; by practice, by experience, by instruction, and by scientific works.

Question 19. About how many years have you assayed and practiced?

400 Answer. Well, I should think it must be—I cannot tell the commencement; but it must—I think has been upwards of fifteen years that I have been in practice.

Question 20. What other business than the crushing and the testing of ores have you done in that fifteen years?

Answer. Nothing else. I have made it a business—testing and working ores for parties in that line of business.

Question 21. State if your certificate of assay, marked Exhibit C, is a correct result from the sample given you.

Answer. It is.

Question 22. I understand you to say that Mr. Donner has given you but one sample to test?

Answer. That is all.

401 Cross-examination by Mr. WISE:

Question 23. Where were you born?

Answer. I was born in Connecticut.

Question 24. Where were you educated; there?

Answer. There.

Question 25. Was your education in mineralogy?

Answer. Not particularly that there?

Question 26. Was it in geology?

Answer. Just a—no, not geology in particular.

Question 27. Did you attend any college, or were you educated at a common school?

Answer. I didn't attend any college—only the academies.

402 Question 28. You were not educated, then, as a mineralogist or geologist at all?

Answer. I was not then.

Question 29. Where did you learn it; out here?

Answer. Mostly.

Question 30. When did you come to California?

Answer. I came into San Francisco in October, 1851.

Question 31. When did you first commence working in mines, or working on minerals?

Answer. I commenced almost immediately; within a few weeks.

Question 32. With whom did you study?

Answer. I have studied and practiced with my brother, mostly.

Question 33. Where is he?

403 Answer. He resides here in town, and is in business with me.

Question 34. Did he take it up himself?

Answer. Well, he took it up from scientific works and instruction.

Question 35. His education was about the same as yours?

Answer. His education was commenced and pursued something like mine, only he had better advantages, pursued it farther, went to college, and graduated—graduated at Yale.

Question 36. Where is your place of business?

Answer. Number 10, Stevenson street.

Question 37. What was the weight of the quicksilver that you got out of that rock that Donner brought you?

404 Answer. The weight—we only made the test from the sample. It was sampled first, and then tested.

Question 38. How did you sample it?

Answer. By putting it through the breaker and making it uniform, and drawing the sample.

Question 39. Drawing a sample from the different parts?

Answer. Yes, sir.

Question 40. How much did you take?

Answer. One pound.

Question 41. How much quicksilver did you get from one pound?

Answer. I think the weight was one ounce and four grains troy.

Question 42. How many ounces are there in a pound?

Answer. Avoirdupois there are sixteen. We weigh ore by
405 the ton counting two thousand pounds avoirdupois.

Question 43. An ounce of troy is heavier than an ounce avoirdupois, isn't it?

Answer. Well, it—(hestitates).

Question 44. Do you know whether it is or not?

Answer. An ounce of troy contains four hundred and eighty grains.

Question 45. How much does an ounce of avoirdupois contain?

Answer. One pound contains seven thousand.

Question 46. And sixteen ounces make a pound of avoirdupois. How many grains is that to the ounce?

Answer. Well, I don't know as I can tell you from my memory. I
406 have a table, and it is all marked on the table.

Question 47. Are you incapable of making the calculation here? Do you take it from the table; do you make your whole calculation from the table?

Answer. From the table. That has got the relative——

Question 48. (Interrupting.) Are you incapable of making the calculation here?

Answer. I don't know whether I could make the calculation or figure it out here or not. I think I could make it right here; yes, sir.

Question 49. I ask you again; do you know whether an ounce of troy is lighter or heavier than an ounce of avoirdupois?

Answer. Say, for instance, twelve ounces of troy would be equal to fourteen and sixty hundredths avoirdupois. I mean sixteen ounces
407 avoirdupois would be equal to about 14.60 ounces of troy.

Question 50. Which is the heavier, an ounce of troy or an ounce of avoirdupois; can you tell?

Answer. Let me see. I will have to see. (Figures.) I don't know as I could answer that question without figuring at it.

Question 31. If from a pound which is sixteen ounces troy, you took one ounce and four grains of quicksilver, how do you make that six and eight-tenths per cent?

Answer. We find the relative value between—we have a table all made out.

Question 52. That is the only way you can tell?

Answer. No; that is not the only way I can tell. I can figure it out
408 by having a little time.

Question 53. Did you test the rock that was given to you this morning for anything else but quicksilver?

Answer. No, sir.

Question 54. Do you know whether or not it had any other metal in it?

Answer. I didn't examine. We tested it for quicksilver.

Question 55. Did you crush the whole of the rock that was brought to you?

Answer. Yes, sir; the whole seven pounds.

Question 56. Then you took a pound from the seven?

Answer. Yes, sir.

Question 57. It is possible that you got hold of the only quicksilver there was in the whole seven pounds, isn't it?

Answer. I should judge that it was almost impossible, when it
409 was averaged the way all ore is sampled.

Question 58. Do you know whether in working quicksilver and other mineral you are able to get as much as you assay?

Answer. I think, if they are properly worked, very nearly so.

Question 59. Is that the ordinary experience of miners?

Answer. I don't know what the experience of miners are.

Question 60. Do know whether in many cases it is possible in ordinary working to get as large a percentage of metal as is shown by the test of the assayer?

Answer. I suppose it depends on the skill of the manipulator.

Question 61. You say you saw Donner this morning?

Answer. Yes, sir.

410 Question 62. Did you see him personally when he came to your place?

Answer. I did.

Question 63. How long were you with him?

Answer. It was only a few moments. He came in and deposited the ore——

Question 64. (Interrupting.) Powell was with him?

Answer. He was with him; yes, sir.

Question 65. Did he tell you what they wanted; that he had a case here and wanted this test to be made to be used in this case?

Answer. I think there was something like that said, but I don't remember what it was.

Question 66. You knew what this test was to be made for?

Answer. He didn't say what it was for.

411 Question 67. When you came into the room here to-day did you know Donner again?

Answer. Yes, sir.

Question 68. Did you ask if he was here?

Answer. Yes, sir; I asked merely as a formality.

Question 69. Did you not ask if there was such a man here as Mr. Donner?

Answer. I believe I did.

Question 70. Donner did not know you either, did he?

Answer. I could not say whether he did or not.

Redirect examination by Mr. HEATH:

Question 71. Did you not say when you came in, "I want to see Mr. Donner"?

412 Answer. In fact I don't know as I can call to mind the very words I used.

Question 72. Examine that sample marked Exhibit B. How does that compare with the sample you crushed and tested to-day?

(OBJ.—Mr. WISE. I object to the question because the witness has not shown that he is competent to testify, and because it is impossible for him to tell without analysis.)

Answer. The character of the ore is almost identical; nearly the same.

Mr. HEATH:

Question 73. How would it compare as to richness?

(OBJ.—The same objection.)

Answer. To use my judgment, I should think this (Exhibit B)

413 was full as rich, if not richer, than that we had.

Question 74. Is it the usual way to test quicksilver ore, the way that you sampled it and tested it to-day?

Answer. It is the usual way.

Recross-examination by Mr. WISE:

Question 75. Have you ever made any examination of the piece of rock just shown you (Exhibit B) except for a few seconds here with your naked eye?

Answer. Not that I know of.

Question 76. How can you tell, then, that this is almost identical with that which you tested this morning?

Answer. From the character of the rock. The decomposed
414 parts are almost the same as that I had this morning.

Question 77. You mean in appearance?

Answer. Yes, sir; in appearance.

Question 78. Can you tell by its appearance to the eye whether two pieces of rock contain the same ingredients?

Answer. No, sir; not always.

Question 79. You should say you should think this (Exhibit B) was fully as rich as that which you tested this morning?

Answer. I should think so.

Question 80. Are you willing to swear that that (Exhibit B) contains any quicksilver, or do you mean to say that from your judgment, without any test, you think it does?

Answer. I mean to say from my judgment that it does contain quicksilver.

415 Question 81. You cannot say from looking at that that it contains any quicksilver?

Answer. I think my judgment tells me that that (Exhibit B) contains quicksilver.

Question 82. But, in point of fact, you can't say that it contains a particle, can you?

Answer. Well, I don't know as I have a right to say that it does contain quicksilver.

Question 83. When you got the product of that rock this morning, how did you know it was quicksilver?

Answer. Well, from the way it appears.

Question 84. To the eye?

Answer. To the eye.

(Signature waived by consent.)

416 *Deposition of R. F. Knox.*

Examination-in-chief of R. F. KNOX by Mr. HEATH:

Question 1. State your name, age, residence, and occupation.

Answer. Name, R. F. Knox; age, fifty-nine; occupation, furnace-builder and quicksilver miner—quicksilver business; residence, South Park, San Francisco.

Question 2. State what experience you have had in the reduction of quicksilver ores.

Answer. I have been engaged in the reduction of quicksilver ores for sixteen years and building furnaces.

Question 3. For how many different mines?

Answer. I was engaged in the reduction of quicksilver at the
417 Redington and Manhattan. Our Knox & Osborn furnace I have been engaged in building, and superintending—attending to the building of the furnaces in six or eight other mines—ten others perhaps.

Question 4. You are then familiar with the entire process of reduction?

Answer. Well, I think so.

Question 5. I will ask you to state if you are familiar with the expenses attending the reducing of the ores?

Answer. Somewhat.

Question 6. State what per cent. is required in ore at the present price of quicksilver to make it profitable to mine for quicksilver.

Answer. Well, that would depend upon a great many contingencies. The main contingency would be, perhaps, the cheapness with which the ore might be got out. You might have a very high grade
418 of ore, and so little of it that it would cost so much to get it out that it would be unprofitable.

Question 7. Taking ordinary mining, what per cent. of ore will pay to work?

Answer. A good mine, one per cent.; twenty pounds to the ton or one per cent.

Cross-examination by Mr. WISE:

Question 8. Mr. Knox, how long do you say you have been engaged in reducing ore?

Answer. About sixteen years.

Question 9. Where?

Answer. First at what is now known as the Redington mine,
419 next at the Manhattan.

Question 10. Where else?

Answer. That is all the mines that I have actually worked myself.

Question 11. You worked those mines?

Answer. Oh, yes, sir.

Question 12. You say that one per cent. in ordinary mines will pay?

Answer. I say in a good mine, where you can produce the ore in large quantities, one per cent. ore will pay.

Question 13. Do you know any high grade of ore in California that don't pay?

Answer. There are a good many mines that don't pay.

Question 14. Having a high grade of ore?

Answer. I say there might be a mine having a high grade of
420 ore, and only a little of it, that would not pay.

Question 15. Do you know any of that kind?

Answer. I know a good many mines that don't pay.

Question 16. What mines are they?

Answer. The Manhattan is one of them.

Question 17. Does the Redington mine pay?

Answer. The Redington is paying small dividends, I believe.

Question 18. What is the percentage of ore in the Manhattan?

Answer. It does not average over three-quarters per cent., and it has been very difficult—no large quantities of it.

Question 19. Do you know what the percentage of the New Almaden is?

421 Answer. I don't absolutely know. I have seen their public statements, too.

Question 20. About what is it?

Answer. About five per cent. I think this year it is running higher.

Question 21. How much does it cost at the Manhattan, for instance, or the Redington, where you worked, to take the cinnabar out of the mine?

Answer. I could not tell you exactly what it cost in the Manhattan mine; but I should say it would cost on an average, including the dead work—prospecting—five dollars a ton; certainly four.

Question 22. Is not that very cheap?

Answer. No, sir; that is as much as it costs in any of the mines, I guess.

422 Question 23. After you take it out how much does it cost to get it to the reduction-works?

Answer. From four to six bits a ton.

Question 24. How much, after you get it to the reduction-works, does it cost to reduce it?

Answer. It costs about a dollar a ton—the best reduction.

Question 25. What other expense is there then?

Answer. Flasks——

Question 26. How much do the flasks cost?

Answer. A dollar and a quarter each, besides the freight up and down.

Question 27. How much does a flask hold?

Answer. Seventy-six and a half pounds.

Question 28. And the freight up and down would cost from here to Monte Diablo?

423 Answer. I guess about eight dollars a ton by wagon and water.

Question 29. Eight dollars a ton up and eight dollars a ton down?

Answer. Yes, sir.

Question 30. That would make sixteen dollars the two ways?

Answer. Yes, sir.

Question 31. After you get it to market, what other expense is there?

Answer. The drayage in town and the commission.

Question 32. What do they usually amount to?

Answer. About two and a half per cent.

Question 33. And the drayage about how much?

Answer. About four cents a flask.

Question 34. What else is there?

424 Answer. That is about all the expenses.

Question 35. That is after everything is in running order. You are speaking now of the ordinary expenses, without allowing for any mishaps or breaking down?

Answer. Yes, sir.

Question 36. In point of fact, when a mine is being worked and run it does not come out as smoothly as it does on paper, does it?

Answer. Not quite. There always are some things that you don't calculate for.

Question 37. When you begin to run, you find that your calculation is always more favorable than the actual working. Is not that true?

Answer. It is generally worse. The expenses are more than you calculate, generally.

425 Question 38. And, as a general rule, you don't get as much as you calculate?

Answer. As a general rule, you don't get quite as much as you calculate. I will say that I never have gone into a definite calculation at my own mine, to find precisely what the cost of production is, although we have got down every item of expense incurred for the last six or eight or ten years. We have got down the cost of the miners' work and the cost of the different branches of the work, but I never have gone and footed it all up, to see how much quicksilver we got out, and how much it cost.

Mr. HEATH:

Question 39. Examine Exhibit B, and state about the per cent. that that rock would go, according to your best judgment.

Answer. My judgment on this rock would be, that it would go
426 about three per cent., I think, if one portion of it were broken off, it would go, perhaps six or seven per cent. That is only my judgment—what I would say at a guess.

Mr. WISE:

Question 40. Can you say, in point of fact, that that (Exhibit B,) does contain quicksilver?

Answer. I am as certain as I am that I am living that that red is quicksilver. I am just as certain that that contains quicksilver as that I am alive.

Question 41. In working mines, do they find, as a general rule, that they come up to the assays—that they can get as much metal from them as the assays show?

Answer. I think not. I never have seen a machine that produces from ore the percentage shown by the assays.

(Signature waived by consent.)

427 *Deposition of John Donner, sr.*

JOHN DONNER, sr., recalled, by Mr. HEATH.

Question 1. Have you examined all parts of the land in controversy, each forty, with reference to the surface containing cinnabar interspersed with the earth?

Answer. I think I have, from the way the lines run. From where I prospected, from the way the creek runs, and the way the lines run, I think you would find it anywhere in that creek. Anywhere there you can pan it out.

Question 2. And upon the banks also?

Answer. In the banks; yes, sir.

Question 3. Have you mined and taken the surface dirt out on each of the forty acres?

428 Answer. I have stripped the top dirt off and found the sulphuret of cinnabar, sulphurets of quicksilver, I mean.

Question 4. State the value of that land for agricultural and grazing purposes?

(Objected to as irrelevant and immaterial.)

Answer. Well, when you come down to agriculture, I wouldn't give much for that for agriculture myself. I don't know how you fellows might call it.

Question 5. In your opinion how much is it worth?

Answer. For my own use I wouldn't give anything for it for agriculture. As I am ranching I wouldn't pay taxes on that land for it.

429 Cross-examination by Mr. WISE:

Question 6. You say you can find the sulphurets of quicksilver almost anywhere?

Answer. Yes, sir.

Question 7. How much of it can you get in a day?

Answer. Well, I never put in a full day myself.

Question 8. How much did you ever get?

Answer. I have put in perhaps an hour.

Question 9. How much would you get in an hour?

Answer. Perhaps half a teaspoonful in panning out in the most temporariest way you can get at it.

430 Question 10. Did you ever sluice?

Answer. No, sir.

Question 11. In taking a pan in the ordinary way of panning, how long does it take you to pan out a pan?

Answer. It would take me about not over five or ten minutes, providing I had the water where I took the dirt.

Question 12. Taking the dirt from where you do there—situated as it is there—you say it took a half an hour to get out a half teaspoonful?

Answer. Not over ten minutes; a half teaspoonful.

Question 13. How much could you pan out in the ordinary way there where you had to go for water—how much could you pan out in that way?

Answer. At the rate of ten minutes to a half teaspoonful.

431 Question 14. Taking that water in the ditch and sluicing, how much could you get out in an hour, with a good head for sluicing?

Answer. I am not acquainted with that way of sluicing, although I believe a man could make good wages at it. I have never tried it, and don't know what a man could do. We did talk of doing that way two years ago, and believed we could make money at it. I believe if I would undertake next winter I could make it pay for working.

Mr. WISE:

Question 15. When I asked you how much you ever got in one hour's work, you said half a teaspoonful; and when counsel for the plaintiff asked you if you could not get half teaspoonful in ten minutes, how came you to change your evidence?

Answer. I don't understand you.

432 Question 16. How came you to give him a different answer as to the quantity you could get within a given time from what you gave me? You answered me that you could get a half teaspoonful in an hour.

Answer. I don't recollect that I did tell you that. I can pan a pan-full provided I have the water handy, and the dirt in about five or ten minutes. I don't recollect that I told you it took me an hour.

Question 17. Didn't you say that?

Answer. I don't recollect that I said that.

Question 18. Did or did you not tell me that?

Answer. I did not, sir, that I recollect of, because I know that I can pan a pan-full at least in from five, to ten minutes. That is what I told you.

433 Question 19. Will every pan-full have half a teaspoonful in it?

Answer. I don't know as every pan-full would.

Mr. HEATH:

Question 20. If you stated to Mr. Wise that it would take you an hour to get out a pan full——

Answer. (Interrupting.) I don't recollect anything about telling him that.

Question 21. If you did state that, did you understand his question?

Answer. I don't know as I did. I just said that I could pan a pan-full in from five to ten minutes.

(Signature waived by consent.)

Here a continuance is taken until to-morrow at 10 o'clock a. m.

434 TUESDAY, *July* 3, 1877.

Present, Mr. Heath, of counsel for complainant; Mr. Wise, of counsel for defendants.

Deposition of C. A. Bramlet.

Examination-in-chief of CALEB A. BRAMLET, by Mr. HEATH:

Question 1. State your name, age, residence, and occupation.

Answer. Name, Cabet A. Bramlet; age, forty; residence, Napa City; occupation, I am farming at the present time.

Question 2. What experience, if any, have you had as a miner?

Answer. Well, I have had considerable experience in mines. I worked some two or three years at the business—some three years, I think.

435 Question 3. Mining for what mineral?

Answer. Part of the time for quicksilver and part of the time for gold and silver.

Question 4. How much of the time for quicksilver?

Answer. About a year, I suppose; may be more.

Question 5. Are you acquainted with cinnabar or quicksilver bearing ores?

Answer. Well, I think I am.

Question 6. Have you ever reduced any in retorts?

Answer. I have.

Question 7. Do you know the land in controversy?

Answer. I do.

Question 8. What examination, if any, did you make of the land?

436 Answer. I was on the land, I think, three different times; on three occasions, I think, I was pretty much all over the land; made an examination myself for quicksilver.

Question 9. What did you find upon the land?

Answer. I found it in many places where I prospected.

Question 10. Found what?

Answer. Cinnabar; quicksilver.

Question 11. Did you retort any of the cinnabar that you found upon that land?

Answer. I did.

Question 12. How did you find it, in the rock or in the surface?

Answer. I found it most generally in rocks, and in the surface too.

Question 13. What was the result of your retorts?

437 (OBJ.—Mr. WISE. That is objected to, as the witness has not shown that he is competent to testify.)

Answer. I got a very fine result from a portion of the rock that I got. I can give you an idea if you wish it.

Mr. HEATH:

Question 14. Give it.

Answer. I retorted a piece from that place about as large, perhaps, or a little larger than a hen egg. I obtained from that about what I should call a lady's thimbleful—a common thimble-full of quicksilver.

Question 15. What was your object in making the examination?

Answer. To purchase an interest in the claim.

Question 16. Did you purchase an interest?

Answer. I did not.

438 Question 17. Why did you not?

Answer. I did not like the title.

Question 18. Had the title been perfect what would you have done?

(OBJ.—Mr. WISE. I object to that. The witness is asked what, upon a hypothetical state of facts, he would have done.)

Answer. I think I should have purchased an interest. That was my intention.

Mr. HEATH:

Question 19. From your examination of the land in controversy, what did you fix upon as its value?

Mr. WISE. I object to that, as the witness has not shown that he is competent to testify, and it is asking for the opinion of the witness.

439 Answer. Well, I would have been willing to give him four thousand dollars for a half interest in the claim, and would do so yet for a perfect title.

Mr. HEATH:

Question 20. What vegetation grows upon the land?

Answer. A very little, if anything, that I could discover there then.

Question 21. How long have you farmed?

Answer. I have farmed about fourteen years.

Question 22. In California?

Answer. In California.

Question 23. What is the value of that land for agricultural or grazing purposes?

Mr. WISE. I make the same objection, and the further objection that it is irrelevant and immaterial.

440 Answer. Well, I shouldn't think it was worth but very little for that purpose. I wouldn't give them five hundred dollars for it. I wouldn't purchase it at all. I don't want it at any price.

Cross-examination by Mr. WISE:

Question 24. How long have you been farming?

Answer. I think about fourteen years; perhaps more.

Question 25. For the fourteen years last past?

Answer. Yes, sir.

Question 26. How long have you been mining?

Answer. I have mined off and on about three years, I suppose.

441 Question 27. Have you been farming all the time you have been mining?

Answer. Pretty much.

Question 28. Made your living at farming?

Answer. Yes, sir.

Question 29. Was mining taken up as a business, or merely as a speculation or pastime, or what?

Answer. I was prospecting; looking round for something to invest in.

Question 30. Have you been actually engaged in mining?

Answer. Yes, sir.

Question 31. Where?

Answer. Most of the time in Sierra County.

Question 32. For what?

Answer. Gold.

442 Question 33. How long were you engaged in mining there?

Answer. About twelve months. I suppose ten or twelve months.

Question 34. In what capacity were you engaged in mining there?

Answer. As a miner, mining.

Question 35. Were you working in the mine?
Answer. I was.
Question 36. What kind of a mine?
Answer. Gold mines.
Question 37. Was it placer or quartz, or was it hydraulic mining, or what was it?
Answer. Part of the time hydraulic and part of the time placer.
Question 38. You have never mined in a vein mine or a ledge?
443 Answer. I have.
Question 39. Whereabouts?
Answer. In Grass Valley. I don't know exactly the location now. It has been some time since I was there. Somewheres near Grass Valley.
Question 40. What was the name of the mine?
Answer. I don't know what the name of the mine was.
Question 41. How long did you work on that?
Answer. I was there about a month or six weeks.
Question 42. And that is all the experience you ever had in mining upon a ledge or lode or vein?
Answer. Well, I have been prospecting in different places.
Question 43. I am not speaking about prospecting, but I am
444 speaking about actual mining.
Answer. I might have been up about two months there.
Question 44. That is all the experience you ever had?
Answer. About all; yes, sir.
Question 45. How long were you engaged in placer mining?
Answer. I was up there, I suppose, perhaps a year.
Question 46. Hydraulic, do you call that the same as placer?
Answer. No; hydraulic and placer together.
Question 47. Was that the only kind of mining you were ever engaged in?
Answer. As; a miner; yes, sir.
Question 48. You never did work underground at all in a mine?
445 Answer. Yes, sir.
Question 49. Where?
Answer. At Centerville, near Dowmeville.
Question 50. In what kind of a mine?
Answer. A gold mine.
Question 51. How long was that?
Answer. I think I worked eight months in that mine.
Question 52. What were you doing?
Answer. Drifting.
Question 53. Doing nothing but drifting?
Answer. Drifting was the principal work. We were working the ledge.
Question 54. You did not help work the rock at all, did you?
Answer. I helped crush the rock.
446 Question 55. Nothing more?
Answer. Nothing more.
Question 56. Was that all the experience you ever had?
Answer. With the exception of what quicksilver mining experience I have had.
Question 57. Where did you have experience in quicksilver mining?
Answer. Napa County.
Question 58. What experience did you have there in quicksilver mining?

Answer. Prospecting, getting out the ore and retorting.

Question 59. How long have you been engaged in working the ore?

Answer. I could not say how long—what time I have spent in
447 that. It has been off and on, at different times.

Question 60. How long would you suppose?

Answer. I suppose, perhaps, a year.

Question 61. What mine were you engaged in?

Answer. No particular mines. I have been in several mines.

Question 62. Name them.

Answer. I have been to the Redington mine, to the Knoxville mine, the Washington mine, one of those mines over at Mount Diablo.

Question 63. In what capacity did you work in the Redington mine?

Answer. Helping break the rock there—not in the Redington mine. I was there just prospecting round in that vicinity.

Question 64. How long were you there?

Answer. I could not say.

448 Question 65. In the Washington mine in what capacity did you work?

Answer. Just prospecting around.

Question 66. And in the Knoxville mine?

Answer. The same thing.

Question 67. That is the way you worked in these mines?

Answer. Yes, sir.

Question 68. You say you have been on this land in controversy three times?

Answer. I think I have.

Question 69. Do you know the section and quarter section?

Answer. I think so.

Question 70. What is the number of the section and the quarter section?

449 Answer. Section 26; northeast quarter of section 26.

Question 71. When were you there first?

Answer. I don't remember the time exactly. It was about a year—over a year ago, some, I think.

Question 72. When were you there the second time?

Answer. That was about—just about a year now, I think.

Question 73. When were you there the last time?

Answer. That was about the last time.

Question 74. What did you go there for?

Answer. I went there to look at the mine.

Question 75. You say you would have bought it but for the fact of the title not being perfect. How did you know anything about the title?

450 Answer. I went to the recorder's office to see if the numbers were right there. And I heard from different parties that I met there about the title, and then went to the recorder's office to see if the numbers was right, and so on, and found that it was the land that I had been on; and I declined to do anything on account of the title not being perfect.

Question 76. What was the objection to the title?

Answer. I could not see that he had any title.

Question 77. Who had?

Answer. Powell.

Question 78. What would you have been willing to give for half of that mine?

Answer. Four thousand dollars if the title was perfect, but I wouldn't give anything for it if it was not.

451 Question 79. How much did you expect to buy.

Answer. A half interest.

Question 80. A half interest in how much?

Answer. A half interest in the whole thing.

Question 81. What do you call the whole thing; forty acres or what?

Answer. One hundred and sixty acres.

Question 82. Are you willing now to give four thousand dollars for an undivided half of that land with a good title?

Answer. I think I would. I might perhaps want to look at it again. That was my impression when I looked it over.

Question 83. Where did you learn to retort quicksilver?

452 Answer. I learned myself, by experience and experiment.

Question 84. You were at a splendid school, were you not, when you were teaching yourself?

Answer. No, not much of a school.

Question 85. Where did you get the piece of rock that you retorted?

Answer. I got it, I think, from two different places up there.

Question 86. On section 36, was it?

Answer. I don't know whether it was or not; I could not say.

Question 87. It was on the land that you have described?

Answer. It was on the land that I supposed was that land.

Question 88. Did you get it yourself?

453 Answer. Yes, sir; I took the rock out myself.

Question 89. What did you take it out of?

Answer. I took it out of the boulder.

Question 90. You saw nothing but a boulder?

Answer. I saw several.

Question 91. You did not see any ledge?

Answer. No; I did not.

Question 92. You have never had, except what you have taught yourself, any education as a miner, or as a mineralogist, or as a geologist, have you; nothing of that kind?

Answer. No, sir.

Question 93. All the quicksilver that you saw there, was it rock or earth, or what was it?

454 Answer. Some of it was earth; small bits of rock; some of it was rocks—sulphurets, or something of that kind.

Question 94. Did that earth look as if it was washed from somewhere?

Answer. No, sir.

Question 95. What did it look like?

Answer. I took it out of the bank.

Question 96. Do you know what an infiltration is?

Answer. I don't know as I do.

Question 97. Do you know what segregation is?

Answer. I don't know as I do.

Question 98. You do not know any of these mining terms?

Answer. No.

Question 99. These rocks; did they look as if they had come

455 from another place, or as though they were naturally there?

Answer. Those large rocks looked as though they had been there quite awhile. They were pretty firmly imbedded in the soil.

Question 100. That is the reason why you supposed they had been there quite awhile?

Answer. They had every indication of it.

Question 101. The boulder from which you broke off a piece that you retorted; was the whole boulder as rich as the piece that you broke off?

Answer. I could not say.

Question 102. What is your opinion?

Answer. I should not think it was. I got perhaps a' good a piece as there was. The side I broke this off from seemed to be about the same —pretty regular through the boulder.

456 Question 103. Is that land pretty rocky, or is it clay, or what is it?

Answer. I should think it was two-thirds rocky.

Question 104. Has all the rock that you saw there got quicksilver in it?

Answer. I think not. I didn't examine all of the rock.

Question 105. What proportion of the rock that you saw and tested had quicksilver in it?

Answer. I could not say what portion.

Question 106. How much cinnabar rock could you collect there in a day, do you suppose?

Answer. I think I could get from that place forty or fifty ton.

Question 107. In one day?

Answer. Yes, sir.

457 Question 108. That would yield how much?

Answer. I could not say.

Question 109. Would it be as rich as that you have spoken of?

Answer. I don't think all of it would be.

Question 110. Would it be pretty nearly equal to that?

Answer. There was quite a large boulder that I examined that I should think would run pretty equal with that I took off.

Question 111. That is, a thimbleful of quicksilver could be taken from a piece about the size of a hen's egg?

Answer. There was not quite a thimble full; somewhere near that.

Question 112. That would be very rich?

Answer. I think it would.

458 Question 113. Now, you say you could get forty tons of that a day?

Answer. No, sir; I did not say that.

Question 114. What did you say?

Answer. I say forty or fifty ton of rock.

Question 115. All of that rock in one place?

Answer. The bigger portion of it within one hundred feet from that place.

Question 116. Would that exhaust the rock, or would there continue to be a supply?

Answer. I could not say. I would have to go under the surface.

Question 117. How long would it take you to get out that fifty ton; could you take that out in a day?

Answer. Yes, sir; it is in large boulders.

Question 118. You could take that out in a day?

459 Answer. It is already taken out. It is exposed to the surface, a great deal of it.

Question 119. What is the cost of crushing and reducing that rock per ton?

Answer. I could not tell you what the cost would be. I haven't had experience enough to know that.

Question 120. It wouldn't be much cost if it was out on the ground, would it?

Answer. The cost of that would not be a great deal.

Question 121. Do you own any mines?

Answer. No, sir.

Question 122. At whose request did you come here to testify?

Answer. I presume Mr. Powell.

Question 123. Any inducements held out to you about this case?

460 Answer. None whatever.

Question 124. How close to Napa City do you live?

Answer. About one hundred feet to the corporation line.

Question 125. Do you know Judge Stoney there?

Answer. Yes, sir.

Question 126. Do you know Judge Hartson?

Answer. Yes, sir.

Redirect examination by Mr. HEATH:

Question 127. May you not be mistaken as to that being on section 26?

Answer. I may possibly be. I am not familiar enough with the land to locate it exactly.

461 Question 128. Did you notice the Welch mine?

Answer. Yes, sir; I was at that.

Question 129. How far from the retorts on the Welch mine was it to this land?

Answer. To the land where I obtained the rock?

Question 130. Yes, sir.

Answer. From the retort, I should think it was about two or three hundred feet, may be. Perhaps not quite so far.

Question 131. Adjoining?

Answer. Right adjoining; a short distance.

Question 132. Which way from it?

Answer. I think it was south, if I am not mistaken.

462 Question 133. Is it the same land upon which Dr. Powell resides; upon which his residence is?

Answer. Yes, sir.

Question 134. So that if that was in another section, you were mistaken as to its being section 26?

Answer. I might possibly be.

Question 135. I will ask you to state if the corner stakes were pointed out to you?

Answer. Yes, sir.

Question 136. Then if I understand you, you took the pieces of rock that you retorted and made the examination of, from rocks upon the same hundred and sixty acres that Dr. Powell lives on, and adjoining the retort works?

Answer. That was my impression.

Question 137. How did you know Dr. Powell lived there?

Answer. I have seen him there several times.

463 Mr. WISE:

Question 138. You only knew that he lived there from what he told you?

Answer. From what I see. Of course, I don't know anything about it.

Mr. HEATH:

Question 139. You saw him on the land, and he showed you where the stakes were?

Answer. Yes, sir.

Recross-examination by Mr. WISE:

Question 140. You knew nothing but what he told you?

Answer. Yes, sir.

Question 141. And all your knowledge about the lines and about his living there was gained from what he told you?

464 Answer. He and the recorder; yes, sir.

Question 142. What recorder?

Answer. At Martinez. He told me it was that section that he claimed. I took the number and went there and asked the recorder if those numbers corresponded. I got the numbers of him, and asked the recorder if this was the place that Powell claimed, and he said it was.

Question 143. Did he look in the books of the recorder's office to find out?

Answer. I am not sure; I think he did.

Question 144. What was the name of the recorder?

Answer. I had an introduction to him, but I don't remember his name.

Question 145. You think he did look at the books?

465 Answer. My impression is he did. I would not say positive.

Question 146. You do not know the recorder's name?

Answer. I don't remember names very well.

Question 147. In what town was the recorder's office?

Answer. Martinez.

Question 148. Did you make the acquaintance of anybody there?

Answer. I didn't see any person in particular to get acquainted with him. I just went there to see if the numbers corresponded.

Question 149. You do not know the name, then, of a soul in Martinez?

Answer. No; I don't know that I do.

466 Question 150. How did you go to Martinez from this land?

Answer. I went in a one-horse buggy.

Question 151. Where did you get the horse; at Martinez?

Answer. I got him at home.

Question 152. You carried him over with you?

Answer. I did.

Question 153. How far is it from Martinez?

Answer. It is not a great ways; fifteen or twenty miles, perhaps.

Question 154. What towns did you go through?

Answer. I went through Benicia first, and went to Martinez, and from Martinez I went to Clayton. I think that was the place, and from there I went to the locality.

Question 155. How far is it from Clayton?

467 Answer. A short distance. I don't think it is more than two or three miles, perhaps.

Question 156. Did you have a contract to buy if you liked the land?

Answer. No; I ascertained what he wanted for it, and went there to see what I could do.

(Signature waived by consent.)

Here a continuance is taken until Friday, 7th instant, at one o'clock p. m.

468 FRIDAY, *July* 6, 1877.

Present, Mr. Heath, of counsel for complainant.

No counsel on behalf of the defendants was present during the examination of McNee and Carter, but their testimony was subsequently read over to Mr. Wise, of counsel for defendants, who thereupon interposed the objections which appear hereafter, and waived cross-examination of said witnesses, announcing that he would show the facts in relation to the survey of the land in controversy by witnesses called in his own behalf.

469 *Deposition of Duncan McNee.*

Examination-in-chief of DUNCAN MCNEE by Mr. HEATH:

Question 1. State your name, age, residence, and occupation.

Answer. Name, Duncan McNee; age, twenty-seven; place of residence, San Francisco; occupation, clerk in the United States land office.

Question 2. How long were you clerk in the United States land office at San Francisco?

Answer. Nine years.

Question 3. Was there a circular received at that office from Washington, dated March 14, 1874?

Answer. There was a letter received.

Question 4. Have you that letter with you?

470 Answer. No, sir.

Question 5. Have you a copy of it?

Answer. I have a copy of it.

Ex. D. (Copy produced by witness and offered in evidence by complainant, marked Complainants' Exhibit "D.")

(OBJ.—The introduction of Exhibit D in evidence is objected to, on the ground that it is not the best evidence; and further, on the ground that the letter cannot affect the railroad company, or its successors in interest after the issuance of the patent.)

Question 6. What was done with the original letter?

Answer. It is on file in the office.

471 Question 7. Upon its being received, was it served upon any one, if so, upon whom?

Answer. Notice, I think was sent to Mr. Wise, attorney for Mr. McLaughlin and the railroad company.

Question 8. About what time was that served upon Mr. Wise, the attorney for the railroad company?

Answer. I can't say exactly. I suppose within at least thirty days; within the date of that, likely—somewhere about that time.

Question 9. Do you know when the map of October 10, 1873, was filed; if so, when?

Answer. I do; it was filed October 17th, 1873.

(Map produced.)

Question 10. State whether the map then filed embraces a description of the northeast quarter of section 29, township 1 north, of

472 range 1 east, Mount Diablo meridian.

Answer. It does.

Question 11. What is the character of that land as returned?

Answer. It is returned as being mineral land.

(Signature waived by consent.)

For cross-examination of this witness see page 409.

473 *Deposition of J. H. Carter.*

Examination-in-chief of J. H. CARTER, by Mr. HEATH:

Question 1. State your name, age, residence, and occupation.

Answer. Name, J. H. Carter; age, twenty-five; residence, San Francisco; occupation, clerk in the surveyor-general's office.

Question 2. Have you the map containing the description of the northeast quarter of section 29, township 1 north, range 1 east, Mount Diablo meridian?

Answer. This is the map (produces).

Question 3. When was the survey made?

Answer. (Referring to map.) A portion of it was made in
474 May, 1866, and the remainder in December, 1872, or January, 1873. The surveyor's contract was in December.

Question 4. When was the map approved?

Answer. The 10th of October, 1873.

Question 5. What is the character, as noted upon that map, of the land mentioned?

(OBJ.—Objected to on the ground that the map is the best evidence.)

Answer. Mineral land.

Question 6. Have you the original field-notes with you?

Answer. I have. (Produces two small books.)

Question 7. Will you read, in answer to this question, the description of the field-notes relating to the quality of the land, as mentioned in the field-notes?

475 (OBJ.—Objected to on the ground that the field-notes themselves are the best evidence.)

Answer. (Referring to one of the books last produced.) The land on the west side of the section is described as rough and broken, spurs of mountain; soil, third rate; timber, scattering pine and oak. On the south side, land abrupt, east slope; soil, third rate; no timber.

(Referring to the other book.) The eastern side is—land, hilly; soil, third rate. There are indications of quicksilver on the first half mile of this land. The north side is—land, hilly; soil, third rate.

(Referring to first book.) The surveyor says, describing his survey here, "The portion of this township which I have subdivided is very rough and mountainous, and is more valuable for mining pur-
476 poses than any other, particularly sections 29, 30, and 31. Some very flattering prospects of cinnabar have been obtained in sections 29 & 30; and in section 29 there are works which are reputed to have cost four thousand or five thousand dollars for the reduction of this ore. Sections 29, 30, 31, and 32 should be held as mineral land, as there are undoubtedly valuable mines of cinnabar and copper in each."

(Signature waived by consent.)

Here a continuance is taken until to-morrow at 10 o'clock a. m.

SATURDAY, *July* 7, 1877.

Further continued by consent until Monday, 9th instant, at 12 o'clock, noon.

477 MONDAY, *July 9th*, 1877.

Present, Mr. Heath, of counsel for complainant; Mr. Wise, of counsel for defendants.

Upon the filing of a stipulation permitting complainant to read in

evidence, upon the hearing of the cause, the patent to the Western Pacific Railroad Company, the complainant announces that his case is closed.

478 *Certificate of examiner.*

In the circuit court of the United States, ninth judicial circuit, district of California.

THE UNITED STATES OF AMERICA
vs.
THE WESTERN PACIFIC RAILROAD COMPANY and Charles McLaughlin.

I, Joseph F. O'Beirne, examiner in chancery, duly appointed by the circuit court of the United States for the ninth circuit, in and for the district of California, do hereby certify that on the several days mentioned in the depositions hereto annexed I was attended, at my office, in the city and county of San Francisco, district of California, by the counsel and witnesses aforesaid; that the said witnesses were
479 by me duly sworn and examined, and their depositions reduced to writing, the reading of said depositions to, and the signing thereof, by said witnesses having been waived by stipulation of counsel of the respective parties herein.

Attest, &c.

J. F. O'BEIRNE,
Examiner.

(Endorsed:) Filed 9 October, 1877. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep'y cl'k.

480 *Caption to depositions on behalf of defendants.*

Circuit court of the United States, district of California.

THE UNITED STATES
vs.
THE WESTERN PACIFIC RAILROAD COMPANY and Charles McLaughlin.

Be it remembered that on this 16th day of August, A. D. 1877, before me, J. F. O'Beirne, an examiner in chancery, duly appointed by the circuit court of the United States for the ninth circuit and district of California, at my office, in the city and county of San Francisco, State of California, personally appeared Jacob Bendixen, William Mulligan, T. J. Crandall, J. W. Stricker, Samuel Phillips, Thomas Bell, Duncan McKnee, & R. F. Knox, witnesses on behalf of the defendants in this above-entitled action.

481–'2 A. Heath, esquire, appeared as counsel on behalf of the complainant, and Tully R. Wise, esquire, as counsel on behalf of the defendants.

And the said witnesses having been by me first duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth in the cause aforesaid, did then and there depose and say as follows, that is to say:

Deposition of Jacob Bendixen.

Examination-in-chief of JACOB BENDIXEN, by Mr. WISE:

Question 1. State your name, age, and place of residence.

Answer. My name is Jacob Bendixen; my age is thirty-one; my residence is Mount Diablo, near Clayton.

Question 2. Did you bring down that mining book?

483 Answer. I did not, sir; I was called out about two o'clock in the morning, out of my bed. I did not bring it down with me.

Question 3. How long have you lived in the neighborhood of Mount Diablo?

Answer. I have lived there, I believe—I came there in 1864.

Question 4. Do you know the land in controversy here?

Answer. I heard something about it; yes, sir.

Question 5. You know the land?

Answer. I do, sir.

Question 6. What is the description of the land?

Answer. It is, I believe it is, the northwest quarter of section 19; northeast quarter of section 19; I might be mistaken.

484 Question 7. Do you know the northeast quarter of section 29, township 1 north, range 1 east, Mount Diablo base and meridian?

Answer. I do, sir.

Question 8. How long have you known it?

Answer. I have known it since about 1865, I guess.

Question 9. Do you know William Ryder Powell?

Answer. I do.

Question 10. Does he live on that land?

Answer. I believe he does.

Question 11. How long have you known William Ryder Powell?

Answer. I couldn't exactly say, sir; I have knowed him a good many years. I believe probably I first knowed him in, I think, about 1866.

485 Question 12. Now, are you an officer—and, if so, state what officer—connected with any alleged mining district in that neighborhood?

Answer. I am recorder of Mount Diablo mining district.

Question 13. How long have you been recorder of that district?

Answer. I have been recorder of that district for several years, sir.

Question 14. Have you in your possession the records of that district?

Answer. I have, sir.

Question 15. What is your business at present?

Answer. Mining, sir.

Question 16. What mine are you engaged in?

Answer. I am running a tunnel, at present, for coal, sir. I 486 have got charge of a quicksilver mine over adjoining the quarter we are talking about.

Question 17. What quicksilver mine, if any, have you ever worked in?

Answer. Over there?

Question 18. Yes.

Answer. I have worked in what they call now the Welch Consolidated quicksilver mine.

Question 19. How long did you work in the Welch Consolidated mine?

Answer. This last time, sir?

Question 20. Altogether.

Answer. At the Welch Consolidated—that mine has been worked there several years, sir, and it has gone under several names. It has been called the Welch mine, then the Mount Diablo quicksilver mine. Now it is the Welch Consolidated Quicksilver Mine.

487 Question 21. In that same mine, under these different names, how long have you worked?

Answer. I could not possibly say. This last time I have been there I suppose going on three years since I had anything to do with it this last time, and then I have been working off and on before there.

Question 22. Have you ever been on the northeast quarter of section 29, township 1 north, of range 1 east, prospecting?

Answer. Many a time; yes, sir.

Question 23. How often have you been there prospecting?

Answer. It would be too numerous to mention.

Question 24. What were you prospecting for?

Answer. Well, prospecting alone in that part of the country

488 for quicksilver, generally.

Mr. HEATH:

Question 25. On that piece, he means.

Answer. Quicksilver.

Mr. WISE:

Question 26. What was the result of your prospecting?

Answer. Nothing, sir.

Question 27. Did you ever find any cinnabar on that quarter section?

Answer. I have.

Question 28. Where?

Answer. I have found cinnabar in the gulch below our retorts.

Question 29. On this quarter section?

Answer. On this quarter section, sir.

Question 31. Did you find a ledge or pieces of rock?

Answer. Pieces of rock, sir.

489 Question 32. Where did they come from?

Answer. I could not tell you.

Question 33. Where are the reduction works that you speak of; on this quarter section?

Answer. They are, sir, supposed to be; to the best of my knowledge, yes, sir.

Question 34. And the pieces of cinnabar you found there, you say were on that quarter section?

Answer. Yes, sir; below in the gulch—along in the gulch.

Question 35. Were they pieces that were carried to the reduction works, or not?

(OBJ.—Objected to as leading.)

Answer. Some had been carried there and others had not been carried there, not by any human strength, because they were boulders

490 that I always suppose rolled——

Mr. HEATH. (Interrupting.) Never mind what you supposed.

Question 36. What did you say about the boulders that you found?

Answer. I said some were there that had not been carried there by man, because it was impossible for man to have carried it there. I always supposed they were carried from the ledge above down into the gulch.

Mr. HEATH. I move to strike out all that portion of the testimony relating to his supposition.

Question 37. Is there any ledge on this land in controversy?

Answer. Not to my knowledge, sir.

Question 38. Have you made a thorough examination of the quarter section?

Answer. I think I have, sir.

491 Question 39. Did you ever find any trace of a ledge on that quarter section?

Answer. I did not, sir.

Question 40. Describe the lay of the land where you found boulders, in connection with the land around it, and where you supposed those boulders came from, and why you supposed so.

Answer. Well, the ledge—what we called the ledge—and the ledge that we are working on, and taking out quicksilver from, is situated on a very steep side hill, about south from the gulch which I am talking about; and the ledge—what we call the ledge—is in places—crops out very strongly; and there is boulders that can be found from the ledge down to the gulch. That is the reason I think that the boulders that I am speaking about lying in the gulch might have rolled down from the ledge above.

492 Question 41. The hill is very steep?

Answer. It is, sir.

Question 42. And these bear evidences of being float rock?

Answer. I think so; certainly, sir.

Question 43. Have you been on that land with William Ryder Powell?

Answer. I have met him on the land lots of times; yes, sir.

Question 44. Do you know anything about there being placer quicksilver there on that land?

Answer. I don't know what you call placer quicksilver. I never heard of such a thing as placer quicksilver, unless you mean in the dirt. You find there a little cinnabar that you can wash out in a pan.

Question 45. Do you know anything about there being cinna-
493 bar that you can pan out there?

Answer. Yes, sir; you can pan out some cinnabar around in places anywhere in that part of the country—most places around by the mine.

Question 46. On this quarter-section, do you know anything about that?

Answer. Well, sir, I have never myself panned any out down there, because I never thought it was worth while.

Question 47. Do you know whether anywhere there quicksilver can be panned out in paying quantities around the creek?

Answer. It cannot, sir.

Question 48. How many ledges, if you know, have been supposed to exist, or have been found, in the Mount Diablo mining district?

494 (OBJ.—Mr. HEATH. That is objected to, as calling for the opinion and the supposition of the witness, without showing that he has any knowedge upon the subject.)

Answer. Only one, to my knowledge.

Mr. WISE:

Question 49. Which ledge is that?

Answer. The Welch Consolidated.

Question 50. Do you know whether that touches or is on this quarter-section at all?

Answer. I don't believe it is, sir—at least, what we call the cropping is not, sir.

Question 51. In what direction from this land is that ledge?

Answer. It lays about south.

Question 52. Do you know whether any other ledge or mining claim in that district has ever been worked, except the Welch mine—
495 any mine for any mineral except coal?

(OBJ.—Objected to as irrelevant.)

Answer. I have known prospecting being done down there, but coal is the only thing that pays around that part of the country.

Question 53. I asked you if you knew of any other mine for any other metal besides coal being worked in that mining district except the Welch Consolidated?

(OBJ.—Objected to as irrelevant.)

Answer. I do not, sir.

Question 54. Do you know whether there has been much prospecting at different times by different persons in that mining district since you have been there?

Answer. There has, a good deal, sir.

496 Question 55. Do you know what has been the result of such prospecting?

Answer. Well, they all throwed it up.

Mr. HEATH:

Question 56. Answer the question.

Answer. Yes, sir; I know.

Mr. WISE:

Question 57. What has been the result?

(OBJ.—Mr. HEATH. I object to that, as calling for the opinion of the witness without showing that he possesses any knowledge of the subject.)

Answer. Didn't find anything.

Mr. WISE:

Question 58. Who at present is the head man of the Welch Consolidated Mine?

Answer. Do you ask who is the owner?

Question 59. Yes, who are the owners?

497 (OBJ.—Objected to as immaterial.)

Answer. Samuel Philips and E. J. Ryan are the principal owners.

Question 60. Where do they live?

Answer. Mr. Philips lives in San Francisco, and Mr. Ryan, I believe, in San Francisco. The last I heard of him he was in New York City.

Question 61. How long, altogether, as far as you can tell, have you worked in that mine?

Answer. This last time I have been there going on three years. I have had charge of the mine and worked for about three years.

Question 62. What was your position there?

Answer. I got charge of the mine—got full control of the mine.

Question 63. Now?

498 Answer. Now, sir.

Question 64. What is your position?

Answer. I don't know what you might call it—agent for the property.

Question 65. Do you know the quantity of quicksilver that has been taken out of that mine?

Answer. I do not, sir. I know what has been taken out lately. I have worked the mine on my own account for a short while.

Question 66. How long have you been working it on your own account?

Answer. A couple of months, I think.

Question 67. How much have you taken out in that time?

Answer. I only took out twenty-four flasks; that is all.

Question 68. How much is there in a flask?

499 Answer. Seventy-six pounds and a half, sir.

Question 69. What was the expense of taking it out?

(OBJ.—Objected to as immaterial.)

Answer. The expense I couldn't hardly tell you, because I haven't got my book; but I haven't got near enough quicksilver to pay the expenses; about half, probably.

Question 70. During the time that you have been connected with the mine and known anything about it, what has been the result of working it? Has there been enough quicksilver extracted to pay the expense of working the mine?

(OBJ.—Objected to as irrelevant and immaterial.)

Answer. The mine has never paid, sir.

500 Question 71. Do you know whether Powell is a doctor or not?

(OBJ.—Objected to as immaterial.)

Answer. I don't, sir.

Question 72. Is he called "Doctor Powell" in that neighborhood?

(OBJ.—The same objection.)

Answer. I hear people call him Doctor Ryder—Dr. Powell, some of them.

Question 73. Is he practicing?

(OBJ.—The same objection.)

Answer. I never see him practice.

Question 74. Do you know Joshua Marsh?

Answer. Very well acquainted with him.

501 Question 75. What is his business?

(OBJ.—Objected to as immaterial.)

Answer. I don't know what business he is in, sir. That is something I never could find out.

Question 76. Mr. Marsh states that his main business has been prospecting and mining in that district. Do you know whether that is true or not?

(OBJ.—Mr. HEATH. I object to the question as immaterial and a matter that the party has already stated he knows nothing about.)

Answer. I think that he is prospecting considerably; what we call prospecting.

Mr. WISE:

Question 77. Do you know whether that has been his main

502 business or not?

(OBJ.—The same objection.)

Answer. I do not, sir.

Question 78. How many claims, if any, has Mr. Marsh recorded in that district in the last five years?

(OBJ.—The same objection.)

Answer. I would have to go for my books if I proved that.

Question 79. Has he recorded any?

Answer. Pretty near the whole country he has got taken in claims. He has got pretty near the whole country located.

Question 80. How long did you say you had known Powell on this land?

Answer. I could not tell. I don't think I have made any answer.

503 Question 81. You don't know how long he has been living there?

Answer. On the land, no, sir.

Question 82. Has he been living there five years?

(OBJ.—Objected to as leading.)

Answer. I don't know, sir; I never kept no run about where he has been living. Probably he has, though.

Question 83. Who was the first person who owned what is now called the Welch Consolidated Quicksilver mine?

(OBJ.—Objected to as immaterial.)

Answer. The discoverer?

Question 84. Yes.

Answer. John Welch.

504 Question 85. When he owned it what was it called?

(The same objection.)

Answer. The Welch Quicksilver and Copper Mining Company, I believe, at that time.

Question 86. Was it worked at all under Welch?

Answer. I don't recollect, sir. I don't know whether it was or not; whether it was worked while he owned it, or I believe he might have been interested in the mine, but there was other parties working it.

Question 87. How long was it worked at that time?

(The same objection.)

Answer. I don't know exactly how long.

505 Question 88. What was the result of the working, if you know?

Answer. The bust up on it.

(OBJ.—Mr. HEATH. I object to that as immaterial, and move to strike out the answer for the reason that the witness states a fact that he can have no knowledge of.)

Mr. WISE:

Question 89. Who succeeded the Welch party?

(OBJ.—The same objection.)

Answer. The workingmen took the claim, and sold out the machinery and houses at sheriff's sale to get their pay.

Question 90. What did they do with the mine?

(The same objection.)

506 Answer. They worked a little while and run a tunnel on it, and prospected a little on it.

Question 91. How long did they work on it?

(The same objection.)

Answer. Quite a while; a year or two, or three years.

Question 92. What was the result of their working it?

(OBJ.—The same objection.)

Answer. They didn't take out no quicksilver at all.

Question 93. How long did they work it?

(The same objection.)

Answer. Well, they used to work it off and on to hold the

507 claim. They run a tunnel in, calculating to strike the ledge quite a distance on.

Question 94. Who succeeded them?

(The same objection.)

Answer. The Welch Consolidated Quicksilver Mining Company.

Question 95. When did the Welch Consolidated Quicksilver Mining Company commence on it, if you know?

(The same objection.)

Answer. Well, it is past three years ago.

Question 96. What has been the result of their work; has it paid expenses or not?

(OBJ.—The same objection.)

508 Answer. They run themselves in debt. Well, I know the company owe me money; that's all. They owe me about a thousand dollars for work.

Question 97. What is the character of the cinnabar they got there; is it from the ledge, or loose rock, or how?

(OBJ.—The same objection.)

Answer. Supposed to be a ledge.

Question 98. And this ledge—is it on low ground or on a hill? And, if it is on a hill, how high is it, as near as you can tell?

Answer. From the lower end of the claim, if a tunnel is run into the center, we would get a depth of probably two hundred feet, or two hundred and fifty feet. I can't say. I could not tell exactly. That is my estimate of it—my view in running in the tunnel.

509 Question 99. Then the ledge is on the hill?

Answer. What we call the ledge is on the hill.

Question 100. Is that ledge north or south or east or west of this land?

Answer. Well, it is south. It might probably be a little west of south.

Question 101. What effect would heavy rains have in that section with regard to moving rocks, or anything of that kind?

(OBJ.—Objected to as immaterial.)

Answer. They would naturally wash things down in the cañon, of course.

Question 102. Where is that cañon?

Answer. That cañon—well, it is north from the ledge—a little east of north.

510 Question 103. Does that cañon touch this land in controversy?

Answer. Yes, sir; it is part of it on this land, I suppose.

Question 104. For how great a distance does that cañon run on this land, as near as you can tell? You know it is a matter of opinion, and you could not be accurate if you wanted to.

Answer. I could not exactly state. I suppose half across the claim, probably half down the west side of the claim. The line crosses the cañon below the reduction works.

Question 105. That would be what distance—half across the claim?

Answer. About eighty rods, I suppose; that I ain't sure of, because I never measured it. Really, I am just guessing that.

511 Question 106. Can you ever find any float quicksilver rock in that cañon?

Answer. Yes, sir.

Question 107. Where did it come from?

(OBJ.—Mr. HEATH. I objected to that as immaterial. There is no evidence showing that he possesses any knowledge as to where it came from.)

Answer. The only cause of its being there that I can see is that it comes from the ledge above.

Question 108. Did this rock have the appearance of having been broken from the ledge or not?

(OBJ.—Objected to as leading.)

Answer. That is always the theory we had. That is the way we always looked at it—that it was broken off from the ledge above.

512 Question 109. Is there any place on the northeast quarter where it could come from?

Answer. Well, it could come down from the other side of the cañon, if there was any there to come down, if there was any cropping out there.

Question 110. Is there any cropping out there for it to come from?

Answer. I haven't seen any.

Question 111. The northeast quarter; what is the character of that land, with reference to agricultural or grazing purposes? Do you know whether there is any grass or timber or wood on the land?

Answer. Considerable good wood on the land; yes, sir.

Question 112. With regard to grazing; what is the character of the land for grazing purposes?

513 Answer. It is no extra grazing land, because it is rather gravelly and rocky in some places; some places pretty good. It ain't what you could call extra good grazing land.

Question 113. But does it produce grass?

Answer. Oh, yes, sir.

Question 114. You spoke about the soil being gravelly and rocky. Has that got any metal in it that you know of?

Answer. I never have seen any.

Question 115. Have you ever examined for that purpose?

Answer. I have prospected along the claim and in the gulches considerably.

Question 116. Is the land—the northeast quarter—valuable at all for grazing purposes—worth anything for grazing purposes?

(OBJ.—Mr. HEATH. That is objected to, as the witness has not
514 shown that he has any knowledge of grazing or agriculture.)

Answer. I am not much of a farmer, and don't understand much of that business. I am a miner, and I ain't much of a judge of any value to that land outside of any mineral there is there.

Mr. WISE:

Question 117. Have you ever seen grass on the land?

Answer. Certainly, I have.

Question 118. Did you ever see stock grazing on it?

Answer. I have.

Question 119. Whose stock?

Answer. I have seen some of my own occasionally there—horses.

Question 120. What, in your opinion, is the value, if it has any,
515 of the northeast quarter of section 29, in township 1 north, of range 1 east, for mining purposes?

(OBJ.—Mr. HEATH. I object to that as irrelevant, and on the ground that the witness has shown no knowledge of the land sufficient to base an opinion on as to its value for mining purposes.)

Answer. So far as mining purposes—for mining purposes—why, I don't know that it has any value, in fact, unless it is to be used along with another mine for the timber and for room for reduction works. If you call that mining purposes, it would be worth considerable. It would be worth considerable to the old mine, that quarter section would; but as to developing any new mine, or anything of that kind, I don't think it would be of any value. I could not put any on it.

516 Mr. WISE:

Question 121. What is the size of Mount Diablo mining district; where does it extend from, and to where?

Answer. It is township 1 north, range 1 east, Mount Diablo base and meridian.

Question 122. One whole township?

Answer. One whole township.

Question 123. It covers all of this land?

Answer. All of that township; yes, sir.

Question 124. That was laid out how?

Answer. By a miners' meeting.

Question 125. And in that whole township, you say, so far as you know, there never has been but one ledge discovered?

Answer. Of quicksilver, to my knowledge.

517 Question 126. Have there been any other metals discovered there?

Answer. There has been a lot of prospecting done, but there has never been anything found. They have got good indications here and there in places, but there hasn't been no regular ledges found, that I know of.

Question 127. Do you know of anybody else but yourself having prospected this quarter section for mineral; if so, who?

(OBJ.—Objected to as irrelevant.)

Answer. I know several parties who have taken up claims on that—located claims.

Question 128. Who have been the parties?

(OBJ.—The same objection.)

Answer. I recollect some of the names: Mr. Ryan, Mr. Sitton,

518 Mr. Currey, Mr. Brown—I don't recollect them all—Mr. Crandall, and myself.

Question 129. What has been the result?

Answer. I never found anything.

Question 130. Did any of the parties find anything that you know of?

Answer. Not that I know of.

Question 131. What did they say?

(OBJ.—Objected to as irrelevant and hearsay.)

Answer. We were pretty near all together, and they never found anything.

Question 132. Had they recorded claims on this quarter section?

Answer. They did record a couple, I believe.

Question 133. Who were they?

519 Answer. It would include the names that I have spoken of—those and others. There was more than that; I don't recollect all of them.

Question 134. What have they done with the claims that they recorded; have they abandoned them or worked them?

Answer. There are none of them working. Whether they have abandoned the claims, I don't know, but there has no work been done. So far as that is concerned, I can only speak for myself there.

Question 135. When was it first discovered, or first said, as near as you can remember, that there might be quicksilver on this quarter section, or when was it first supposed that there might be quicksilver on this quarter section?

Answer. I don't know that it was ever supposed.

520 Question 136. When was the first prospecting done there, so far as you know?

Answer. Mr. Powell has been scratching around there several years back. I don't know how long.

Question 137. Has any work ever been done on that quarter section?

Answer. Before Powell worked on it?

Question 138. At all, so far as you know?

Answer. There has a little; yes, sir.

Question 139. Who has worked on it?

Answer. I have seen Mr. Powell there working on it.

Question 140. Who else?

Answer. Tom Priaulx.

Question 141. Who else?

Answer. Mr. Oglesby's men.

521 Question 142. Is that all you know?

Answer. Well, I worked there a day or two, and I had two men working there a day or two. I believe Mr. Crandall worked a day or two on it.

Q. 143. What has been the result of all of those workings, so far as you know?

Answer. I never seen anything found.

Question 144. Did you ever find any rock on this quarter section that looked as if it had come from the ledge of the Welch mine?

(OBJ.—Mr. HEATH. I object to that.)

Answer. I did.

Mr. WISE:

Question 145. When?

522 Answer. Oh, some time ago—a considerable time—a good while.

Question 146. Where did you find it?

Answer. I found it in the creek close to Mr. Ryder's house—Mr. Powell's house, I mean.

Question 147. Did it have the appearance of having been carried there, or washed there, or how did it look as if it got there?

Mr. HEATH. I object to that.

Answer. It had the appearance of being carried there.

Mr. WISE:

Question 148. Do you know whether or not it was carried there?

Answer. It had that appearance. It was never washed there.

Question 149. Do you know whether or not Powell claimed that that came from the northeast quarter?

523 Mr. HEATH. I object.

Answer. I never heard him say.

Mr. WISE:

Question 150. Did you ever see any prospect holes on William Ryder Powell's land?

Answer. Oh, yes, sir; I see some holes.

Question 151. How far from his house?

Answer. The most of the digging that I have seen done was close over to the old mine. I suppose that must be over a quarter of a mile—between quarter and half a mile.

Question 152. Who dug those holes, mostly?

Answer. There was one tunnel run back of the hill that Mr. Oglesby, superintendent of the Welch mine, run. I have seen Mr. Ryder dig some, and I believe seen Mr. Priaulx dig some on Mr. Powell's

524 land, too. I have dug some, and I believe Mr. Crandall has dug a little there. I know there was a hole there that he claimed.

Question 153. Did you ever see any cinnabar come out of any of those places—those holes or tunnels?

Answer. Yes, sir.

Question 154. Where did it come from?

Answer. Right down in the gulch, from digging in the bed of the creek—the gulch, I think, I was speaking of before.

Question 155. How far is that from the reduction works?

Answer. Only a short distance.

Question 156. And the reduction works, you say, are on this quarter?

Answer. Yes, sir.

525 Question 157. How are the reduction works situated, with reference to the hill up above?

Answer. The reduction works is on the same side of the ledge as that gulch.

Question 158. Is it possible for that cinnabar there to have been washed from the reduction works?

Answer. The boulders?

Question 159. The boulders; yes, sir.

Answer. No, sir; not possible.

Question 160. Is it possible for the pieces of the ledge you saw to have been washed there from the reduction works?

Answer. Not from the reduction works?

Question 161. Is it possible for them to have come from the other hill; from the other quarter?

Answer. I don't see where it could come from there; I never

526 see any ledge there; it might be possible though.

Question 162. But you never saw any ledge there?

Answer. I never did.

Question 163. How is it possible for them to have got there?

Answer. I have always thought that they came down from the old ledge, thrown down into the gulch from above.

Cross-examination by Mr. HEATH:

Question 164. You think the land in controversy is the northeast quarter of section 19, do you?

Answer. That is what they tell me it is; yes, sir.

527 Question 165. You are positive that it is the northeast quarter of section 19?

Answer. I am no surveyor, sir; I am under the impression that is what they called it. I am not positive of anything.

Question 166. Is it so recorded on your books; do you recollect?

Answer. If my books were here I could tell you; I could not tell without my books.

Question 167. You have been testifying with reference to the northeast quarter of section 19 in all of your testimony, have you not?

Answer. Yes, sir.

Question 168. When you first saw Dr. Powell was he living upon this land—in 1866?

Answer. He was not.

Question 169. Where was he?

528 Answer. He was cutting hay close to Clayton.

Question 170. How long after that did you see him in a shanty on this land, or working on this land; how long after you first became acquainted with him?

Answer. In fact I never was very much acquainted with Mr. Ryder; I knew him, and met him frequently. I recollect of seeing him, I be-

lieve it was in 1866 first, I won't be positive. I recollect, I believe it was in 1869, that he was living with Captain James T. Harding.

Question 171. Whereabouts?

Answer. On, I believe it is, the northwest quarter of section 19.

Question 172. Did he not at that time claim this land; and was he not in 1866, 1867, 1868, and 1869 prospecting more or less upon that land?

529 Answer. I believe, to the best of my knowledge, that Mr. Ryder was away from there from some time in 1867 to 1869.

Question 173. Then in 1869, did he not prospect on the land?

Answer. I don't know, sir.

Question 174. Did he not prospect there in 1870?

Answer. I believe his claim is recorded in 1870, on my book.

Question 175. Did he not prospect in 1871?

Answer. I suppose he did. I don't know.

Question 176. And in 1872?

Answer. I don't know, sir.

Question 177. You say you worked the last three years on that mine. Now, what portion of the time during the three years has work

530 been done upon the mine—any work at all in mining?

Answer. The biggest part of the time, sir.

Question 178. Was mining being done there in 1875?

Answer. Yes, sir.

Question 179. What portion of 1875; the whole of it?

Answer. I believe it was, sir. I can't exactly tell you. I know for the time I have been there—if I had my books here, I could tell you all about it.

Question 180. If you had been there for the last three years you were certainly there in 1875, were you not?

Answer. Yes, sir; but whether working continuously or not, I don't know.

Question 181. Were you in charge of the mine?

531 Answer. No, sir; not in 1875.

Question 182. Were you at work as a miner?

Answer. Yes, sir; a part of the time.

Question 183. Did you not work while anybody was at work at the mine that year?

Answer. No, sir.

Question 184. Others worked when you did not?

Answer. Yes, sir.

Question 185. What portion of that year 1875, did you work?

Answer. The year 1875, I believe, I worked from about, I guess it was about February, till towards the fall, some time. I worked as a man in the mine.

Question 186. In 1876, did you have charge of the mine?

532 Answer. A portion of 1876, I had charge of the mine.

Question 187. What time did you commence having charge of the mine?

Answer. I could not tell you without my books.

Question 188. You could tell me within six weeks?

Answer. No, sir; I could not.

Question 189. Can you tell me within two months?

Answer. I don't know as I could.

Question 190. Can you tell me within three months?

Answer. As near as I can recollect, I took charge of the mine in October, 1876; I think, I did. I won't say positively.

533 Question 191. Do you recollect seeing Mr. Philips and myself at the mine in July of 1876?

Answer. Yes, sir.

Question 192. Who had charge of the mine then?

Answer. I did.

Question 193. Then you did not first take charge of the mine in October, but you had charge in July?

Answer. 1875.

Question 194. You say you first took charge of the mine in October, 1876?

Answer. In 1875, I mean.

Question 195. Have you had charge of the mine ever since October, 1875?

Answer. I have, sir.

Question 196. Where there men mining there in July, 1876, when Mr. Philips and myself were there?

534 Answer. We were repairing the tunnel, we and a man by the name of Mulligan.

Question 197. Is it not a fact that there had been no rock taken out of the hill and retorted for six months prior to that time?

Answer. I believe probably it is. The mine was worked many times for months when there wasn't any rock taken out.

Question 198. You were prospecting?

Answer. Yes, sir; we were prospecting and running tunnel.

Question 199. Has not the most of the work that has been done upon that mine been running tunnels and prospecting?

Answer. Yes, sir.

Question 200. Now, sir, in running tunnels through the rock,

535 do you expect that the common rock is going to pay the expenses of running the tunnel?

Answer. I never burnt any common rock, sir.

Question 201. Then you do not expect, when you run tunnels, that the common rock will pay the expenses of tunnelling?

Answer. No, sir.

Question 202. Who directed you to go there and prospect on the northeast quarter?

Answer. Myself, sir.

Question 203. You went for yourself?

Answer. Yes, sir.

Question 204. When did you first prospect there?

Answer. I could not tell you; off and on.

Question 205. When did you first prospect there?

536 Answer. I can't recollect, sir.

Question 206. What year?

Answer. I don't know.

Question 207. What year did you next prospect there?

Answer. I don't know when the first time was, and could not tell you when the next was.

Question 208. When was the third time you prospected there?

Answer. I don't know.

Question 209. When was the fourth time you prospected there?

Answer. I never kept no run of the times.

Question 210. I don't ask you to state within a day or a month; I ask you when you prospected there. Are you positively certain that you ever prospected there?

537 Answer. I am, sir.

Question 211. How deep a hole did you dig on that land?
Answer. Not very—only a few feet.
Question 212. How many feet?
Answer. I don't know. I didn't sink no shaft at all. I run in a little hole in one place, digging around—prospecting around.
Question 213. How many feet is the deepest hole that you ever dug?
Answer. Well, about the height of myself.
Question 214. Did you ever strike the bed-rock?
Answer. Yes, sir; I seen plenty of bed-rock.
Question 215. Did you ever strike any bed-rock in any hole that you ever dug, sir?
Answer. I have never seen anything else.
538 Question 216. Did you ever go through the earth and strike rock in any hole you ever dug?
Answer. Yes, sir.
Question 217. Where?
Answer. In the creek.
Question 218. What creek?
Answer. Between the northwest and northeast quarter.
Question 219. How many feet in the rock did you ever dig?
Answer. I didn't dig any in it.
Question 220. How many holes did you ever dig upon that land?
Answer. Well, sir, I didn't count them. I have here and there taken a pick and shovel and dug just enough to inform myself
539 of the nature of the ground that I was digging in.
Question 221. Then the nature of the top earth was what you were looking for?
Answer. Yes, sir; and the rock also.
Question 222. You never went down into the rock to ascertain whether or not there was a ledge?
Answer. No, sir.
Question 223. Now, sir, do you not know that valuable ledges are found where they do not crop out at the surface?
Answer. Certainly; lots of them.
Question 224. Did you ever go down to ascertain whether or not there was a ledge on that land that did not crop to the surface?
Answer. I never did, sir.
Question 225. Did you ever dig any in the cañon in which the
540 reduction works are placed?
Answer. I did, sir.
Question 226. Whereabouts?
Answer. Below the reduction works a ways.
Question 227. How far?
Answer. About a couple of hundred feet, I guess.
Question 228. Did you go down to the bed-rock?
Answer. I helped to run in a tunnel, sir, about one hundred and sixty-odd feet.
Question 229. For whom?
Answer. For the Mount Diablo Quicksilver Mining Company, sir.
Question 230. Where is that tunnel?
Answer. The tunnel is below the reduction works, just where Powell's line—Powell's line just comes down to the mouth of it.
541 Question 231. I will ask you to state if that tunnel was not run upon another quarter section, and is not a particle of it on this quarter section?

Answer. A particle of it was.

Question 232. How much of it?

Answer. According to our survey, the open-cut—there is a mark made where the line crosses. In one of the rails that leads into the mouth of the tunnel for the car to run on there is a mark made. It is only the open-cut that is in Mr. Powell's land, that is the best of my knowledge.

Question 233. You did not, then, run a tunnel upon the quarter section in controversy at all down the cañon?

Answer. We call it running tunnel, sir.

Question 234. On that quarter section?

542 Answer. We commenced on that quarter section and started the tunnel; yes, sir.

Question 235. How many feet of tunnel is there on the quarter section in controversy that has been dug by you for the Welch Consolidated?

Answer. For the Welch Consolidated, none, sir.

Question 236. For any party; how many feet, sir?

Answer. Only a few.

Question 237. How many, sir?

Answer. That I helped to dig myself?

Question 238. Yes.

Answer. I could not tell you.

Question 239. Was there one foot?

Answer. Yes, sir.

543 Question 240. Two feet?

Answer. Yes, sir.

Question 241. Ten feet?

Answer. I don't know.

Question 242. Twenty feet?

Answer. I could not tell you.

Question 243. Twenty-five feet?

Answer. I could not tell you.

Question 244. Was there or was there not ten?

Answer. I could not tell you. Do you allow to reckon that tunnel that Oglesby run on the other side of the hill?

Question 245. No, sir; the tunnel in the cañon?

Answer. I don't; I never measured it.

544 Question 246. Is not the end of that tunnel where it comes into the hill; isn't that upon another section of land, and not upon Powell's?

Answer. As I told you, the line, according to the established survey, crosses close to the mouth of that tunnel, sir. I could not tell you whether it is two or three feet, or whether it is twenty feet. The mouth of the tunnel is caved down now. I couldn't very well tell you.

Question 247. Do you run in the direction of this northeast section or from it?

Answer. From it.

Question 248. Then the end of this tunnel, where you stopped work, is not on this land in controversy?

Answer. No, sir.

Question 249. Then you were prospecting another quarter section, and not this one?

545 Answer. When we got across the line; yes, sir.

Question 250. Is it not true that there isn't ten feet within Powell's land, the land in controversy?

Answer. I don't understand you.

Question 251. Is it not a fact that the mouth of the tunnel commences just at the line, and runs away from this land and not towards it?

Answer. You probably do not understand me.

Question 252. I understand you perfectly, sir, but I want it on paper so the court will understand you.

Answer. Well, I will explain it as near as I am able to. The line comes down like this—I told you that we started across the line to run in the tunnel, the line that you are talking about; and it is—

546 I could not tell you how many feet, we started across the line and run in on the south quarter section?

Question 253. Not the quarter section in controversy?

Answer. No, sir.

Question 254. Then you can answer the question. That tunnel was run in order to prospect that other quarter section, and not this quarter section in controversy?

Answer. Yes, sir.

Question 255. You only started on the line of Powell's land, and went from there in on to other lands?

Answer. We started on the land that Powell claimed there on that quarter section, and run towards the other quarter section. I have answered that before.

547 Question 256. How many pounds of the surface earth did you prospect or wash out to find float cinnabar, in those several prospects that you prospected on this land?

Answer. Well, I will tell you. I have washed out a good many, sir.

Question 257. On this land, I say. You have washed out a good many pounds?

Answer. Yes, sir. I have washed out a good many pounds.

Question 257. You say you have found cinnabar in the gulch. What gulch do you mean?

Answer. I mean right below the dump. I wanted to see whether we were losing quicksilver in the dirt, or whether we burnt it all.

Question 258. On the side of the hill below Powell's house, did you ever pan out quicksilver?

Answer. No, sir; I did not.

548 Question 259. Then you only went and examined in the gulch to see if you were wasting quicksilver?

Answer. No; I have panned it out to see what prospect I could get along the gulch.

Question 260. Did you not pan it for the purpose of seeing whether or not you were wasting quicksilver from your retorts; was not that your object?

Answer. In some cases.

Question 261. Did you not swear that the only in which you washed there was for the purpose of seeing whether or not you were not wasting quicksilver?

Answer. I can't swear that I have stated any such thing.

Question 262. Is it not a fact that the only case where you washed any earth around the reduction works was in order to see whether

549 you were wasting quicksilver or not?

Answer. No, sir; we went to try it there.

Question 263. You say that you found cinnabar below the reduction works that you supposed came from the hillside?

Answer. I did, sir.

Question 264. Might not those be the croppings of a ledge?

Answer. Might possibly be.

Question 265. How deep down there have you gone to ascertain the character of the earth that contains cinnabar in that gulch? How deep down have you dug in the rocks?

Answer. I have never dug any. I have just taken out and washed out the bed-rock.

Question 266. Then all that you have seen of these boulders
550 and pieces containing cinnabar was on the top of the ground? You have not examined them more than what you have seen of it on the top of the ground?

Answer. I have seen them, and I have seen Mr. Ryder blasting boulders there.

Question 267. In the cut where Mr. Ryder or Mr. Powell has been blasting, have you seen rock containing cinnabar in the bottom of that sluice, in the end?

Answer. No, sir.

Question 268. You never did?

Answer. No, sir.

Question 269. You don't know whether there is any deeper than he went or not?

Answer. I do not, sir.

Question 270. You say there is no ledge, to your knowledge, upon that ground?

551 Answer. There ain't, sir.

Question 271. The Welch Consolidated Quicksilver ledge ends how near that ground where you have prospected it?

Answer. I could not tell. We never was deep enough by a good many hundred feet to tell.

Question 272. How far from this piece of ground did you strike that ledge?

Answer. Well, I suppose about—well, in some places the cropping all came to the line within a hundred yards, and probably in other places it wouldn't come near so close.

Question 273. What is the main direction of that ledge, north and south?

Answer. It runs east and west—northwest and southeast about, is the nearest you can get to it.

Question 274. What section and quarter section of land is that ledge upon?

552 Answer. Well, sir, we got a stretch of land there that contains forty-eight hundred feet, and it runs across several quarter sections, and I think what you talk about is the southeast quarter of section 19. That is what you are talking about, I suppose.

Question 275. How do you know that cinnabar cannot be sluiced or panned out in paying quantities upon that land if you never tried it?

Answer. I never said I did know, sir. I said I had never known it to pay.

Question 276. Did you not swear, in answer to a question by Mr. Wise, that there was no place on that land where cinnabar could be panned out in paying quantities?

Answer. I did, sir.

553 Question 277. You never tried to pan it out. How did you know?

Answer. I am a miner, sir, and know by indications whether rock will pay or not. I don't need to retort a whole hill or rock to know whether the rock will pay.

Question 278. Then you are so much of a miner that you can walk all over this land and tell how much quicksilver there is in the surface?

Answer. I am a good judge of it by the nature of the ground.

Question 279. Got a good mineral eye?

Answer. Pretty fair, sir; can't complain.

Question 280. How far deep in the ground can you see without digging a hole?

Answer. It depends how deep the hole is before I look.

554 Question 281. How deep can you see if there is no hole there?

Answer. I guess I can see about as far as most any one.

Question 282. Then by walking over the ground, and by looking over the ground, you can tell how much mineral there is there?

Answer. No, sir; I can't tell by looking over the land, but by prospecting I can get a good idea of it.

Question 283. If you have not prospected all over this ground, how do you know that there is not mineral in paying quantities on any part of it?

Answer. I told you before that I had taken out some there.

Question 284. Did you not say that you had never taken any out on the side towards Powell's house?

Answer. I did, sir.

555 Question 285. Then do you say there is not enough there to pay for sluicing?

Answer. Yes, sir; I know that and swear it.

Question 286. How do you know it?

Answer. I know it because it ain't possible.

Question 287. How do you know it ain't possible?

Answer. By my knowledge, sir.

Question 288. What particular knowledge do you possess that enables you to say that it is not possible?

Answer. The knowledge of a miner, sir.

Question 289. Then a miner can see into the ground and see what it contains without any inspecting?

Answer. I didn't say so.

Question 290. Then how do you know? You must state some-

556 thing. The court don't know anything about your knowledge of mining and we want the court to understand.

Answer. The miners don't know much about courts, but if they will come up there we will show them that there isn't much quicksilver there.

Question 291. Will you make an explanation to enable the court to know as much at you know?

Answer. Yes, sir.

Question 292. Then how do you know there is not enough cinnabar there to sluice it in paying quantities?

Answer. Because there isn't the least indications of any.

Question 293. That is my answer?

Answer. Yes, sir; mind you, this is only on the hillside where Ryder's house is on.

557 Question 294. What kind of a retort is there at the reduction works where you worked at the Welsh Consolidated mine?

Answer. We have got no retort, sir.

Question 295. What have you got?

Answer. We have got a furnace.

Question 296. What kind of a furnace?

Answer. Well, it is a kind of air-improved furnace, built out of stone.

Question 297. Is it possible to save all the quicksilver from the cinnabar that you attempted to reduce in that furnace?

Answer. Not all, sir.

Question 298. Is it not a fact that that furnace is so imperfectly constructed that the quicksilver stands in globules on the outside of
558 that furnace? Have you not seen it?

Answer. I have, lots of times.

Question 299. Is it not a fact, also, that it is so imperfectly constructed that the quicksilver penetrates through between the stones, and through the mortar, and stands out in globules, and runs off?

Answer. It is, sir.

Question 300. Is it not a fact that a large quantity of the fumes escapes from the top?

Answer. Certainly, sir; from the top?

Question 301. Yes, sir. Is it not a fact that a large portion of the fumes escapes from there?

Answer. A very small portion. When a charge is put in there is bound to be a few vapors escape out. That can't be helped.

559 Question 302. Still your retort is so imperfectly constructed that the quicksilver escapes all around the furnace?

Answer. Well, I don't know that it escapes all round. There is a little quicksilver escapes in places; yes, sir.

Question 303. During the two months that you were working there for yourself, and took out twenty-four flasks containing seventy-six and a half pounds each; did you do any prospecting—running tunnels?

Answer. No, sir.

Question 304. Simply took out the rock?

Answer Simply took out the ore, sir.

Question 305. How many men were at work there?

Answer. A portion of the time there was nine, including the cook; a portion of the time eight.

560 Question 306. When Mr. Welch worked that mine you say that he did not take out quicksilver enough to pay expenses. How do you know it?

Answer. I never said anything about Mr. Welch. If you mean the Welch mine——

Question 307. Yes; before these present parties held possession of it?

Answer. Well, I will tell you how I know; because they could not pay the laboring men.

Question 308. Is that the only reason you had for saying so?

Answer. They couldn't pay their grocery bills and other bills, and they had to let the sheriff sell the property.

Question 309. Is that the only reason that you have for saying that they never made it pay?

561 Answer. According to the superintendent's books it didn't pay.

Question 310. How do you know?

Answer. I have seen them and had his papers, and have been in court so many times in reference to the claim——

Question 311. (Interrupting.) Then all you know is by reference to those books?

Answer. Yes, sir; and by his not giving us our pay, and everything together.

Mr. HEATH. I move to strike out all the testimony of the witness regarding the working and prosperity of the Welch mine during the time that Welch and the others, up to the present owners, had possession of it, for the reason that the witness possesses no knowledge upon

562 the subject, except what he has heard of and seen in the books of the company. It is secondary, and not the best evidence.

The WITNESS. I stated also to you, sir, that I never got my pay for my work.

Question 312. How many flasks of quicksilver were taken out of the Welch Consolidated quicksilver mine during the management of Mr. Oglesby?

Answer. They say there was nine thousand dollars' worth of quicksilver taken out. That was the amount given in. I was one of the shareholders of the mine.

Question 313. How many flasks of quicksilver were taken out?

Answer. I can't tell you. I told you that is the amount the quicksilver realized. I didn't keep account of the flasks.

563 Question 314. How do you know that that is the amount the quicksilver realized?

Answer. From the return given to the stockholders from the general management.

Question 315. Was that return kept upon a book?

Answer. I suppose it was; yes, sir.

Question 316. Where are those books?

Answer. I don't know, sir.

Question 317. Are they in your possession?

Answer. No, sir; they are not. I could find them, though, if necessary.

Question 318. And you say that the present company are in debt, and do not pay their debts?

Answer. They are that. They can't pay their debts.

564 Question 319. How much money has been expended by them in running tunnels before they took out any ore?

Answer. I can't tell.

Question 320. How much did that retort cost them?

Answer. I don't know, sir; the books are in San Francisco.

Question 321. How much money have they expended in improvements upon the mine, other than in taking out cinnabar for retorting?

Answer. I don't know, sir.

Question 322. Then you don't know anything about the financial condition of that company?

Answer. About as much as anybody.

Question 323. How do you know of their financial condition?

565 Answer. I have been their agent; their superintendent of the mines, sir.

Question 324. How much do they owe?

Answer. I don't know how much they owe. They owe me about a thousand dollars or so.

Question 325. How much did the retort cost them?

Answer. I can't tell you without the books.

Question 326. How much did the tunnels cost them that they dug where they took no quicksilver out?

Answer. Cost them two dollars and a half a foot.

Question 327. How many feet have been dug?

Answer. About two hundred.

Question 328. Then you don't know the financial condition of that company?

566 Answer. I do, sir.

Question 329. How much did the retorts cost them?

Answer. One of them cost us—we ain't got no retorts.

Question 330. How much the furnaces cost them?

Answer. I can't tell you unless I look over the books.

Question 331 Is it not a fact that you don't know the amount of the expenses?

Answer. I could not tell without looking over my books.

Question 332. I am asking you now concerning your positive knowledge, and not what you know from your books.

Answer. As near as I can recollect, I can tell you that furnace
567 cost six or seven thousand dollars. I can't exactly tell you without my books. I don't pretend to keep all them things in my head.

Question 333. How far is it from the land of Powell to the point where you struck the ledge at a depth of two hundred or two hundred and fifty feet?

Answer. We never struck the ledge yet that depth there, sir.

Question 334. Did you not swear in your direct examination that in running the tunnel you would strike the ledge at the depth of two hundred or two hundred and fifty feet?

Answer. No, sir; you are mistaken. I said by running a tunnel to the center of the hill we would go about two hundred or two hundred and fifty feet.

Question 335. How far from the line of Powell's land would
568 it be where you would strike this ledge?

Answer. Probably, sir, six or seven hundred feet, sir. I believe between six and seven hundred feet that the estimate is made for having the tunnel run.

Question 336. Is there not a steep hill between the ledge and Powell's house, and the ravine on the other side of the hill between them?

Answer. Yes, sir.

Question 337. Therefore cinnabar rock, lying at or about Powell's house, could not be washed down by rains from the ledge?

Answer. I have stated so before, sir.

Question 338. If there is any cinnabar on the slope of the hill towards Powell's house, that cinnabar could not be deposited there from the ledge, could it?

569 Answer. No, sir.

Question 339. You say there has been but one ledge of quicksilver discovered in Mount Diablo district?

Answer. Only one ledge that I seen.

Question 340. Who have run tunnels and prospected for quicksilver in that district? name the parties.

Answer. Well, there is Joshua Marsh, and a nigger, George Jackson, I believe his name is; William R. Morgan, John Jacobs, Bruno Alven Sleven, William Sitton, Tom Priaulx—it is hard for me to recollect them all—E. J. Ryan, T. J. Crandall, Powell. Do you want any more mentioned?

Question 341. No; that will do. How many tunnels or shafts that Joshua Marsh has run and dug have you visited and examined?

570 Answer. Well, now, that is hard to tell. I have been in so many little holes that he has been digging that I couldn't positively tell you.

Question 342. How many have you visited that he has dug?

Answer. I have visited two or three; perhaps more.

Question 343. What was your object in visiting those tunnels?

Answer. I used to go and see what kind of prospect he had.

Question 344. Mere curiosity?

Answer. Mere curiosity, sir.

Question 345. Have you visited the prospecting of all the persons you have named?

Answer. I have been at most all of them, sir.

Question 346. For what object?

571 Answer. Curiosity; to see what prospect there was.

Question 347. Now, do you know, of your own knowledge, that there have none of those men discovered ledges?

Answer. As far as I have seen, and so far as my knowledge goes, I say they have not.

Question 348. I ask you if you possess the knowledge?

Answer. I say, to my knowledge, there has nothing *but* struck.

Question 349. Do you know whether or not they have struck any ledges upon that quarter?

Answer. I don't know of any.

Question 350. Do you know whether or not they have struck any ledges upon that quarter section?

572 Answer. I can't state it any plainer than I have. I say that I don't know that they have struck any.

Question 351. You don't know whether they have or not, then?

Answer. No, sir.

Question 352. When did you locate a claim upon Doctor Powell's land?

Answer. I don't recollect the time.

Question 353. What year?

Answer. I believe it was probably in 1875, sir.

Question 354. At whose request did you make that location?

Answer. I don't understand you. I understood you a minute ago to ask me whether I located a claim.

Question 355. Yes.

573 Answer. Yes, I did; at my own request, and all the persons that was along with me.

Question 356. Who told you to do that; did not Mr. Phillips tell you to locate that claim?

Answer. He did not, sir, or anybody else belonging to the mine.

Question 357. What year did Mr. Sitton locate on that claim?

Answer. That was about the same time.

Question 358. What time did Currey do it?

Answer. At the same time.

Question 359. And Mr. Brown?

Answer. At the same time.

Question 360. And Mr. Crandall?

574 Answer. All at the same time; not exactly the same day, but probably in the same month, and about the same time.

Question 361. At the time you made those locations, did you not know that Dr. Powell had applied to the government for a patent?

(OBJ.—Objected to as irrelevant and immaterial.)

Answer. I don't know whether he has made one now or not, sir.

Question 362. Did you not know that there was a case pending between Powell and McLaughlin with reference to the claim of Powell to that land?

Answer. I believe I did, sir.

Question 363. Had you not been subpœnaed here, and been down here as a witness in that case?

Answer. Not that I know of. I might have been; I don't
575 recollect; I don't think it.

Question 364. Do you not know that there was a case pending between Powell and Phillips with reference to his title to the land at the time you made that location?

Answer. A portion of the land, yes, sir; a small portion of the land.

Question 365. It was with reference to that land?

Answer. Yes, sir.

Question 366. Had you not been a witness at Martinez on the trial of that case?

Answer. No, sir.

Question 367. Had you not been here in San Francisco as a witness?

Answer. Yes, sir; I was called here as a witness; I never testified; I was never called to Martinez.

576 Question 368. Then, at the time you made those locations, you knew that Dr. Powell claimed the land, and that his title was then in the courts?

Answer. I didn't know anything about his title. I knew that he pretended to claim the land.

Question 369. And that the question was then before the courts?

Answer. And that the question was then before the courts about the Welch Consolidated mine; yes, sir.

Question 370. What feelings have you toward Dr. Powell?

Answer. They aint very extra favorable; that is one thing certain.

Question 371. Have you and he not had troubles?

Answer. Yes, sir.

577 Question 372. About the 12th day of April, 1875, did you and Dr. Powell have a personal rencontre?

Answer. Yes, sir; I was too drunk at the time to know much.

Question 373. I will ask you to state if you have not threatened to do him injury?

Answer. I have not, sir.

Question 374. You have not?

Answer. No, sir.

Question 375. Did you not at that time threaten that you would drive him off from that place?

Answer. I told you I was tight at the time. I might have done that.

Question 376. I will ask you to state if, on Monday, the 12th day of April, 1875, at Ingreham's store, in the town of Clayton, you
578 did not threaten to drive Dr. Powell off his land?

Answer. I told you I was tight. I don't recollect it.

Question 377. Did you not at the same time say that you had come there to have a fight with him?

Answer. I don't recollect anything about it, sir.

Question 378. Did you not then strike him?

Answer. They say I did. They fined me five dollars, any way.

Question 379. State whether you did not go to the justice and complain of yourself, and pay the fine.

Answer. Mr. Crandall here complained of me.

Question 380. At your request?

Answer. I don't remember much about. I had been to a dance all night.

579 Question 381. About the month of February, say the 15th, 1871, did not you, and Mr. Ryan, and Mr. Crandall come to where Dr. Powell and Mr. Martin were at work and order him to quit work;

and threaten if he didn't quit work that you and your party would drive him off from that place?

Answer. 1871?

Question 382. On or about the 15th day of February, 1871.

Answer. No, sir. I never knew such a man by the name of Ryan then. Which Ryan is it?

Question 383. The man who was president of the Welch Consolidated mine?

Answer. I didn't know him at the time to my knowledge?

Question 384. Do you swear that at that time such a thing did not happen?

580 Answer. Yes, sir.

Question 385. On or about the 15th day of February, 1870, did not you, and Mr. Crandall, and Mr. Ryan go to where Martin and Powell were at work and order them to leave the place, and say that if they didn't leave the place——

Answer. (Interrupting.) Mr. Ryan, the superintendent of the Welch mine, do I understand you to say?

Question 386. Yes.

Answer. No, sir; not 1870.

Question 387. Did you not, on or about the 15th day of February, 1872, go with Mr. Ryan and Mr. Crandall, the then probable superintendent of the Welch Consolidated mine, to where Martin and Powell were at work, and forbid their working, and threaten to drive them off the land by force if they didn't quit?

581 Answer. No, sir.

Question 388. Do you know when Priaulx's house was burned?

Answer. Yes, sir; I don't recollect the date; I don't recollect the year. I think it was probably—it might have been in the commencement of 1876, probably. I was here in San Francisco at the time.

Question 389. Were you at the Welch Consolidated mine the day that that house was burned?

Answer. No, sir. I was in San Francisco.

Redirect examination by Mr. WISE:

Question 390. Do you know where William Ryder Powell lives?

582 Answer. Yes, sir; I know the house what they call William Ryder's house. I guess that is where he lives.

Question 391. You have called that section 19 and you have called it section 29; do you know whether it is 19 or 29?

Answer. It is 29, sir.

Question 392. Then, on your examination, when you stated that you had been speaking of section 19——

Answer. It was a mistake, sir.

Question 393. It was 29 that you meant?

Answer. Yes, sir.

Question 394. Now, with regard to the furnace that you have got there at the Welch Consolidated Quicksilver mine, is it a good one or not?

Answer. It could be made a good one; yes, sir, with a little repairs. It isn't very extra now.

583 Question 395. Mr. Marsh, in his testimony, said that this land was adjoining the Welch Quicksilver mine, as he calls it, and that they have dug on his land from four to eight and ten feet, and found ore on his ground, that is, on this quarter section; is that so?

Answer. I haven't seen it. I have seen holes dug, but I never seen any ore.

Question 396. I am speaking about the Welch Quicksilver mine—whether they ever traced their ledge into this quarter section.

Answer. Not into that quarter section in controversy, they haven't.

Question 397. That is untrue then?

Answer. Yes, sir; that is untrue.

584 Question 398. And Mr. Marsh says quicksilver crops out all over this land of Powell's, that is, this land in controversy; have you ever seen any quicksilver cropping on that land?

Answer. I don't know what he would call quicksilver croppings. If he calls them boulders that have rolled down into the gulch I have seen them and that is all I have seen.

Question 399. Then you have never seen any permanent rock on this land at all?

Answer. Not quicksilver rock.

Question 400. And Mr. Marsh says there was ore on the dump at the mouth of the cut on Powell's land. He says there is plenty of it there now, at the time he testified, which was on the 27th day of June last; was that correct or incorrect?

585 Answer. I have seen some boulders with cinnabar in; yes, sir; there is some ore there.

Question 401. But was there any ore on the dump?

Answer. As I told you, in the boulders that is blasted there there is a little quicksilver in. If you call that ore, it is there.

Question 402. Is there a good deal of it?

Answer. No, sir. I don't know how much there is of it. There ain't much; not a great deal.

Question 403. How long is that cut; what is the size of that cut?

Answer. I never measured it.

Question 404. As near as you can judge, how long, how deep, and how wide?

586 Answer. It ain't deep enough to go under ground any way; and so far as the length is concerned, I don't know; it might probably be four or five feet wide, may be six feet wide. I never measured it.

Question 405. Counsel asked you about Priaulx's house being burned; did William Ryder Powell accuse you of burning that house?

Answer. He never did himself. Other parties told me that he did.

Question 406. You were in San Francisco at the time?

Answer. I was, sir. I can prove it by a man present here now.

(Signature waived by consent.)

Here a recess is taken until 1 o'clock p. m.

587 *Deposition of Wm. Mulligan.*

AFTERNOON.

Examination-in-chief of WILLIAM MULLIGAN, by Mr. WISE:

Question 1. State your name, age, and place of residence.

Answer. Name, William Mulligan; age, somewheres between thirty-eight and forty-two; I couldn't say exactly; place of residence, Contra Costa County.

Question 2. What is your business?

Answer. I follow all kinds; first one thing and then another.

Question 3. Do you know William Ryder Powell?

Answer. I know the man by sight.

588 Question 4. Do you know where he lives?

Answer. Yes, well, partly knew where he lives; I can't exactly say he lives there altogether.

Question 5. Do you know the northeast quarter of section 29, in township 1 north, range 1 east?

Answer. No, sir; I can't say I do know one quarter or another quarter in the county, even the township.

Question 6. You know where he lives?

Answer. Yes, sir.

Question 7. You know that land?

Answer. I know that land which you are disputing.

Question 8. Do you know where the Welch mine is?

Answer. Yes, sir; but as to lines, I don't know furthermore

589 than what has been shown me right there.

Question 9. How long have you known that land?

Answer. In the neighborhood of three years or thereabouts; between two and three.

Question 10. Have you been upon it for the purpose of examining it with regard to minerals on it?

Answer. I have been all over the land, time and again. I haven't been examining it for one party or another. I have been all over it several times, and never saw no sign of mineral from one side to the other—not that I could see for myself. At the same time there might have been mineral there. I have been over the surface.

Question 11. Did you ever find any silver or quicksilver on that land?

Answer. No, sir; I have not.

590 Question 12. With whom did you go on the land, if anybody?

Answer. Well, I have been on the land with several. I have been over the land from one end to the other, personally, and then I have been over the land time and again hunting. I never prospected any on it.

Question 13. Do you know of any prospecting being done there?

Answer. Well, I see a few little holes around there. I couldn't call it prospecting. I couldn't call it a mine.

Question 14. Were those holes that you saw intended *intended* for prospect holes?

Answer. Well, there was one or two—two I know of.

Question 15. Do you know where the cut on that land is?

591 Answer. Yes, sir; this cut in the ravine.

Question 16. Do you know where the tunnel is?

Answer. Yes, sir; that is in the ravine on the other side.

Mr. HEATH:

Question 17. That is not on the land, though?

Answer. Yes, sir; that is on the land.

Mr. WISE:

Question 18. Do you know anything about any pieces of rock from the Welch Quicksilver mine being on this land?

Answer. I know of a couple of pieces, packed over there, the same as I would pack a specimen to give to that gentleman there, or give to you.

Question 19. Who packed that there?

592 Answer. Well, a chap by the name of Robert Jordan, if I don't make a mistake, this last spring.

Question 20. Did you ever see any quicksilver boulders in the gulch on his land?

Answer. Yes, sir.

Question 21. Did you ever see any pieces of rock that were broken off from the ledge?

Answer. I have, broken off from a boulder. I couldn't say it was from the ledge.

Question 22. Where did those boulders come from, if you know?

Answer. Well, I think they came from the Welch Consolidated.

Question 23. Why do you think so?

Answer. Because I think I helped to break the rock myself.

593 Question 24. I am not talking about the two pieces that you say there, but I am speaking about the boulders. Where did those boulders come from, if you know?

Answer. I couldn't exactly tell you where those boulders came from.

Question 25. Well, did they come out of the ground there, or were they washed there?

Answer. They are there on the ground now; regular wash boulders—tumbler boulders. Where the ledge is I don't know.

Question 26. Is there a high hill close to this gulch from which they could come?

Answer. Certainly there is.

Question 27. Where is that hill?

Answer. That is on the south side.

Question 28. That hill is connected with that quarter section?

594 Answer. Upon my word, I won't tell you what quarter it is and what it ain't.

Question 29. You don't know?

Answer. I don't know.

Question 30. Do you know whether it is on this quarter or another quarter?

Answer. I do not.

Question 31. With regard to the vein, or to the ledge; is it connected or not with the Welch mine, the hill from where you supposed these boulders came?

Answer. Yes, sir; I should say that it is all the same.

Question 32. How far is the Welch mine from this gulch where these boulders are?

Answer. Somewhere in the neighborhood of about a thousand

595 feet—might be more or less—from the tunnel to where the boulders is.

Question 33. Did you ever work on the Welch mine yourself?

Answer. I have worked on the Welch Consolidated.

Question 34. How long?

Answer. Between two and a half and three years.

Question 35. In what capacity were you working there? Were you working in the mine, or on the ledge, or what?

Answer. I was working the mine on what they determined the ledge, between that and the blacksmith-shop.

Question 36. Have you seen what they call the ledge there?

Answer. What they term the ledge.

Question 37. Was it a ledge, or not?

596 Answer. That I could not tell you.

Question 38. Except on the hill where this is—I don't ask you now about the quarter sections, because you say you don't know the

lines, except on the hill where this is—is there in that neighborhood, to your knowledge, another ledge?

Answer. I don't know of any ledge. I don't see no refined ledge on the place anywhere—what I would call a ledge.

Question 39. Not even on the Welch Consolidated?

Answer. Not even on the Welch Consolidated.

Question 40. Have you made examination in other places?

Answer. I have not. I have been over the ground time and again.

Question 41. Have you seen where other people have made examinations?

597 Answer. I have seen what they were digging, and where it came from.

Question 42. And you haven't seen, you say, any ledge?

Answer. No, sir; none at all.

Question 43. Have you seen any quicksilver deposit anywhere else?

Answer. Outside of the Welch Consolidated?

Question 44. Yes, sir.

Answer. Yes, sir.

Question 45. Whereabouts?

Answer. Over—old Joshua Marsh has been digging over, maybe, a quarter of a mile from there, going toward Marsh Creek. There I have seen him taking it out with his naked hand.

Question 46. How much did he take out?

598 Answer. He took out enough to satisfy me that there was quicksilver there; not enough to pay any one for taking it out, though.

Question 47. How far from this land was it?

Answer. A quarter of a mile or over.

Question 48. In which direction from William Ryder Powell's claim?

Answer. Southeast.

Question 49. That would be up hill or not?

Answer. Down.

Question 50. That deposit that you saw was not on the William Ryder Powell claim, was it?

Answer. No; don't go nowheres near it.

Question 51. Was the deposit that you saw permanently connected with the ground, or did it evidently come from somewhere

599 else.

Answer. Oh, below the ground.

Question 52. Was it washed there, or was it permanent?

Answer. No; it is a little seam in the hill; at least I would call it a seam.

Question 53. Was it in rock, or simply a hole—a pocket?

Answer. No; it is in the rock.

Question 54. How large a rock?

Answer. That I could not tell you. This might be a hundred feet—not more.

Question 55. I don't understand you. The rock was a hundred feet long?

Answer. No; the tunnel.

Question 56. But I am speaking of the place where the quick-

600 silver was got. Was it in rock, in earth, or how was it?

Answer. I don't know what you would call it. Here was the hill; and it was a seam——

Question 57. What kind of a rock was it?

Answer. It is a kind of a sand rock.

Question 58. How big a place did you see with quicksilver in it?

Answer. Well, a very small place; just a seam.

Question 59. Was it cinnabar rock, or this sandstone you speak of?

Answer. Sandstone.

Question 60. When you took it out in what state was the quicksilver; was it in a liquid state or was it——

Answer. No; just cinnabar.

601 Question 61. Did you take out all that you saw?

Answer. No; I didn't take out all that I saw, but I took out the best part of it.

Question 62. How much would it amount to?

Answer. I don't know; I couldn't tell exactly how much it would amount to. It was a nice little specimen. I don't suppose it would amount to over five or six cents. It looked very nice there, though.

Question 63. Did you ever do any washing with a pan or see any done on William Ryder Powell's claim?

Answer. No, sir; I have not.

Question 64. Never knew of any being done?

Answer. No; not to my knowledge.

Question 65. Do you know where the furnace of the Welch mine is?

602 Answer. I do.

Question 66. Whereabouts is it?

Answer. Well, it is a little way down a ravine at the foot of the mountain. I could not say exactly what section or anything about it.

Question 67. Do you know whether or not it is on Powell's claim?

Answer. Well, it has been contended for between Powell and the company for a good while.

Question 68. Do you know from whom the company got that land to put their furnaces on?

(OBJ.—Objected to as irrelevant.)

Answer. I could not tell you. The furnace was there before I came there.

603 Question 69. You don't know, then, who they got it from?

Answer. I do not.

Question 70. Do you know whether or not it is on the Powell claim?

Answer. Well, it is what Powell contends for a claim.

Question 71. Powell, then, claims that the furnace is on his claim?

Answer. I believe so.

Question 72. Did he claim it to you.

Answer. No.

Question 73. To whom did he claim it?

Answer. That I could not tell you. He sold to the Welch Consolidated Company.

Question 74. How do you know he sold to the Welch Consolidated Company?

604 Answer. I have seen a letter from Mr. Philips saying, that he paid him two hundred, or two hundred and fifty dollars for it.

Mr. HEATH. I move to strike out all that the witness has stated about the claim of Powell to this land, as irrelevant and as hearsay.

Question 75. You have been over nearly all the Powell claim, or do you know it well?

Answer. Well, I have been all over the man's ground; what he claims to be his ground.

Question 76. Have you seen over that land prospect holes?

Answer. I have.

Question 77. How many do you think?

605 Answer. Well, I might see seven or eight, probably ten or twelve; such as they are.

Question 78. Are they scattered 'round or all in one place?

Answer. Well, all over.

Question 79. Have you examined in those different prospect holes?

Answer. No, sir; not closely.

Question 80. Did you make any examination?

Answer. I have been back and forward, 'round the holes, and looking 'round. I can't see nothing 'round there.

Question 81. Did you see any ledge?

Answer. No ledge.

Question 82. Did you examine it for quicksilver-cinnabar?

Answer. No; I had not.

606 Cross-examination by Mr. HEATH:

Question 1. You say you know the tunnel in the ravine. Is that the same tunnel testified to by Mr. Bendixen, as having been run by Mr. Oglesby?

Answer. Yes, sir.

Question 2. Do you know that that is on the land in controversy?

Answer. Yes, sir.

Question 3. You know that?

Answer. Yes, sir.

Question 4. Then you know the lines of the land?

Answer. Well, I don't exactly know the lines of the land, but I know pretty well.

607 Question 5. Then, if you don't know exactly the lines of the land, is that mouth of that tunnel so far within the lines that you know it is on the quarter section of Powell?

Answer. Yes, sir.

Question 6. You swear to that positively?

Answer. Yes, sir.

Question 7. Then you know more of it than Mr. Bendixen?

Answer. I don't know that I do.

Question 8. Don't you know Mr. Bendixen swore that he didn't know whether it was within the lines or not?

Answer. No, sir. Now, sir, you are jumping from the frying-pan into the fire. I say the tunnel that you and I have spoken of is partly on Powell's ground.

608 Question 9. Do I understand you to say that if Mr. Bendixen swore that the mouth of the tunnel was on Powell's land, but the greater part of the digging of the tunnel was on the adjoining piece of land, would he have better means of knowledge than you, or would you have better means of knowledge than he?

Answer. Neither one nor the other.

Question 10. Do you swear——

Answer. (Interrupting.) I swear that the whole of the tunnel, and the mouth of the tunnel, is on Powell's ground.

Question 11. Where is that?

Answer. It is running north from the Welch Consolidated Quicksilver Works, pretty near half way between Ryder's place and the quicksilver works.

Question 12. Which side of the hill?

609 Answer. The north side. There is a ravine making out at the head of his place, and this tunnel is drove near it, and you are getting down into the other tunnel.

Question 13. I am not asking you about that tunnel.
Answer. Yes, you are.
Question 14. I ask you to confine yourself now to the tunnel below the reduction works.
Answer. Oh, now you are bringing me to a horse of another color.
Question 15. On whose land is that?
Answer. That is more than I can tell you. I don't answer that question, because I don't know.
Question 16. You don't know whose land it is on?
610 Answer. I know where the tunnel is. The tunnel is a gopher-hole, the way it is now.
Question 17. It is all caved in, is it not?
Answer. It is all caved in. It is caved in here and there all through it.
Question 18. You were there when that was dug?
Answer. I was not.
Question 19. Dug before you came there?
Answer. Yes, sir.
Question 20. When you testified here a little while ago about the tunnel—where was that tunnel?
Answer. Between the reduction works and Powell's place.
Question 21. Is it on the slope of the hill going towards Powell's house?
611 Answer. No, sir; it is not on the slope. It comes down over one hill, and then there is a ravine, and then there is another rise between that and Powell's.
Question 22. What direction from the reduction works?
Answer. It is north.
Question 23. Is there a hill between that tunnel and the reduction works?
Answer. There is.
Question 24. Those boulders that you saw below the reduction works, are they bedded in the surface of the ground?
Answer. They are.
Question 25. Are they jagged or round?
Answer. Well, they are kind of washed.
Question 26. Are there jagged points to them?
612 Answer. Some.
Question 27. Have you ever noticed any boulders in the cut that Powell made?
Answer. There is one at the head of the cut that Powell has blasted.
Question 28. Was that a round one or was it jagged?
Answer. Well, I would call it a washed boulder.
Question 29. Why would you call it a washed boulder?
Answer. Because it has been a smooth boulder, and now he has blasted it, it is jagged of course.
Question 30. Did you see it before it was blasted?
Answer. No, sir.
613 Question 31. You only saw it after it was blasted?
Answer. Yes, sir.
Question 32. Did you take up pieces and examine them?
Answer. Yes, sir.
Question 33. To what extent?
Answer. I took up a small piece and looked at that.
Question 34. When he blasted that did he burst it all to pieces?
Answer. He burst pieces off; he didn't burst it all to pieces.
Question 35. How large is that?

Answer. A pretty large boulder.

Question 36. Is not the bottom of that still bedded in the ground?

Answer. Yes, sir.

614 Question 37. I will ask you to state, as near as you can, how many feet it would be across the boulder.

Answer. That I could not tell you.

Question 38. State whether or not it would be as many as ten feet across the boulder.

Answer. No, sir; I could not tell that.

Question 39. It is a pretty big boulder, is it not?

Answer. It is a pretty good sized boulder—a grandfather.

Question 40. How many feet is it from the top of the ground to the bottom of Powell's cut?

Answer. On a level?

Question 41. Well, straight down, from the surface down.

Answer. It may be six feet. I never measured it.

615 Question 42. Don't you know that it is over fifteen feet?

Answer. I don't know anything of the kind.

Question 43. Is it not more than twenty feet?

Answer. No, sir.

Question 44. Will you swear that it is not fifteen?

Answer. Not to my knowledge. I never measured it, no more than you.

Question 45. Were you ever down in the cut at the end where it comes up at the bank?

Answer. No, sir.

Question 46. Have you examined it to see the depth of the cut?

Answer. No.

Question 47. Then, really, you don't know its depth?

616 Answer. No.

Question 48. You say you had seen those prospect holes in the place. Have you ever been down in the bottom of them to see the ground at the bottom?

Answer. Never.

Question 49. You never examined the rock at the bottom?

Answer. No.

Question 50. Never took up the earth that was thrown out in your hands to see what it contains?

Answer. No, sir; I have not.

Question 51. All that you did was simply to go over the ground and look at it?

Answer. Yes, sir.

617 Question 52. Then all the examination that you have ever made on that claim was just by walking over the ground and seeing what was on the ground?

Answer. Yes, sir; that is all.

(Signature waived by consent.)

618 *Deposition of T. J. Crandall.*

Examination-in-chief of T. J. CRANDALL, by Mr. WISE:

Question 1. State your name, age, and place of residence.

Answer. My name is T. J. Crandall; I am thirty-six years old; I reside at Clayton, in Contra Costa County.

Question 2. What is your business, Mr. Crandall?

Answer. Mining now, at present, and has been for the last three or four years.

Question 3. How long have you been a miner?

Answer. Well, for four or five years, off and on—sometimes. Sometimes I am doing nothing.

619 Question 4. Do you know William Ryder Powell's claim.

Answer. Yes, sir.

Question 5. And where he lives?

Answer. Yes, sir.

Question 6. Do you know it by its number and quarter section?

Answer. No, sir; not exactly.

Question 7. But you know where the Welch mine is?

Answer. Yes, sir.

Question 8. And you know the land?

Answer. Yes, sir.

Question 9. Have you ever been at the Welch mine?

Answer. Yes, sir.

Question 10. Did you ever work there?

Answer. Yes, sir.

620 Question 11. With regard to the ledge that they have got on the Welch mine—have you ever worked on that ledge?

Answer. I have—very little, though, on the ledge. I worked outside mostly when I worked there at the mine.

Question 12. How far is that ledge from the Powell claim?

Answer. Well, the line runs—how far is the ledge?

Question 13. Yes, sir.

Answer. I don't know exactly. It must be four or five hundred feet to the ledge—that is, what they call the ledge.

Question 14. Is Powell's down hill or up hill from this ledge?

Answer. Powell's is down hill from this ledge for a ways, and then it is up hill. It is down hill until you pass the reduction works.

621 Question 15. Do you know where the gulch is?

Answer. Yes, sir.

Question 16. Is that gulch down hill from the ledge?

Answer. That gulch is down hill from the ledge, sir.

Question 17. Can rocks and boulders be carried from that hill down to that gulch by rains and floods?

Answer. Very easily, sir.

Question 18. Are there a number of boulders that have been carried by rains and storms down the hill?

Answer. Yes, sir.

Question 19. Have you examined them with reference to that subject at different times?

622 Answer. I have. I have never seen them rolling down, but I have seen that they were boulders, and that they must have come down that way.

Question 20. This ledge that you speak of—is it a genuine ledge?

Answer. I don't think it is. I could not say positively, but so far as my knowledge goes I should think it was a regular ledge.

Question 21. What kind of rock is that, generally?

Answer. Well, it is sand-rock, and—well, I don't know what you call it. There is a kind of an open, porous rock, called quicksilver rock. I don't know what you would call it, to tell the truth.

Question 22. What is its color?

Answer. It is different colors. There is dark blue rock, with dark spots in it, showing cinnabar; and then there is a bright blue

623 rock, showing cinnabar; and then there is some so open and porous that you can't tell the nature of the rock. It is yellow, old, rotten.

Question 23. In this rock that you speak of is there a considerable of quicksilver, or not?

Answer. In some places there is. On the Welch quicksilver mine they do strike some rich deposits of quicksilver.

Question 24. Are these deposits irrregular or regular and continuous deposits?

Answer. Very irregular.

Question 25. Do you know anything about the Welch quicksilver mine—about the cost of production of the mine?

(OBJ.—Objected to as irrelevant.)

Answer. I do.

624 Question 26. How much quicksilver, to your knowledge, has been produced from that land?

(OBJ.—The same objection.)

Answer. I could not tell exactly.

Question 27. Do you know whether the working of that mine has been profitable or unprofitable?

(OBJ.—The same objection.)

Answer. I do, sir.

Question 28. What has been the result?

(OBJ.—The same objection.)

Answer. It has been very unprofitable to my certain knowledge.

Question 29. About what proportion of the working expenses
625 would the yield pay, so far as you have observed?

(OBJ.—The same objection.)

Answer. I don't think it would pay one-fourth of the expenses, take it all through, from the time it has first commenced to be worked—from the time the first retort was put up, until to-day, I don't think it has even paid one-eighth.

Question 30. With regard to the way it has been worked; do you know whether it has been judici*al*ly worked or not?

Answer. It has been worked like all other mines. I could not say whether judici*al*ly or otherwise. It has been worked by some men that has professed to be miners.

Question 31. The same result with all of them?

Answer. All the same. There was one time that the mine paid
626 a very little, but it was only for such a short time that it isn't worth while to mention it.

Question 32. Mr. Welch testified that there was a Wolf Mining Company in this district. Do you know anything about such a mine?

(OBJ.—The same objection.)

Answer. I do, sir; I don't know it by that name, but I know where there is a man by the name of Wolf, and Welch is his partner. That mine belongs to me—or it would belong to me if I wanted it; but I don't want it.

Question 33. Is that mine worked?

(The same objection.)

Answer. Is it working now?

Question 34. Is it working now?

627 Answer. Indeed, it is not.

Question 35. Was it ever worked?

(OBJ.—The same objection.)

Answer. It was.

Question 36. Was it ever profitably worked?

Answer. I don't hardly think it was. I never saw them retort any ore, and they must retort if they want to make a quicksilver mine profitable; at least that has been my experience.

Question 37. Have you ever done any prospecting?

Answer. Well, if I done any, I done it on the Welch claim, and the Wolf claim, as you call it. I worked on the Wolf claim till I was satisfied, anyway, to give it over to Wolf, if he wanted it; let him have the Wolf's share.

628 Question 38. Have you ever been on William Ryder Powell's claim?

Answer. I have not.

Question 39. Did you ever examine any of those prospect holes that were there?

Answer. Not particularly. I was in two or three of them. I was in one tunnel that was run under Mr. Oglesby' direction or instruction.

Question 40. What did that tunnel go through?

Answer. It runs kind of through the bed-rock.

Question 41. Have you been through that tunnel; all over it?

Answer. You wouldn't have to go in very far; about forty or fifty feet.

Question 42. What did that cut, that has been spoken of, pass through?

629 Answer. Well, he run in there; I was down there two or three times while he was in there, and he struck a good-sized boulder—an immense boulder, in fact, nearly as big as this room. He blowed some of that up, and there might have been a speck of quicksilver, but it didn't amount to much, wherever it came from.

Question 43. How about the earth that was there?

Answer. In that corner where that reduction works stood, probably there is two acres, or maybe more—that is on what Ryder claims. On the side of the hill there, there is a lot of float-rock. I can't say where it is from, float-rock in that form; but no ledge; no ledge that I seen, at any rate.

Question 44. How far was that from this cut?

630 Answer. Well, we will say a hundred feet.

Question 45. Is that the only place on Powell's claim where you ever saw quicksilver or cinnabar?

Answer. It is the only place—right there in that basin.

Question 46. Have you examined other places?

Answer. I have been around holes he had dug. I have never dug on the north side, but on the south side I have.

Question 47. Did you ever see any panning done there for quicksilver?

Answer. I have seen it over towards the south of the claim, but never on the other side. I never went in myself on the other side, but have on the south side.

Question 48. You never saw any done on any other part of the claim?

631 Answer. I never saw any done on any other part of the claim; no, sir.

Question 49. What was the result where you saw it?

Answer. The result was a little cinnabar on the bottom of the pan to show that there was something there.

Question 50. Does the rock in the gulch have the appearance of being naturally there, or coming from another place?

Answer. It looks to have been coming from other places.

Question 51. Then this cinnabar that has been panned out?

Answer. Of course that must have come from other places; cinnabar don't grow on a ledge, or on the outside of a rock.

632 Question 52. So that whatever cinnabar is found there must come from other places?

Answer. Whatever cinnabar is there must come from other places; that is my idea about it.

Question 53. You say this boulder that was blown up——

Answer. I say when Powell was at work there, I asked him how things looked, and asked him a few questions. But I didn't see nothing to amount to anything in the rock even that was there.

Question 54. Do you know where the rock that is reduced at the Welch works comes from?

(OBJ.—Objected to as irrelevant.)

Answer. I do.

Question 55. Where does it come from?

633 Answer. It come out of the tunnel, the most of it. There was some retorted here years ago that was surface rock, pretty much altogether, that is outside boulders. They would just go out and break up boulders, just as we do now—some of it rich, some of it worthless. Some with a small amount of mineral in, and some with a good deal.

Question 56. You spoke about two acres of ground——

Answer. Well, I don't know exactly whether there was that much.

Question 57. Is there any mineral carried from there—from that two acres—to be retorted?

Answer. No, sir; I never knew of any. There may have been years ago.

Question 58. Is that two acres down the hill or up the hill from the Welch mine?

Answer. It is down hill.

634 Question 59. Can boulders and rock go from the hill where the Welch mine is down to this two acres?

Answer. Well, there is nothing to hinder them, if there was a storm big enough to wash them.

Question 60. In the course of time would they naturally wash down there?

Answer. I think they would.

Question 61. You have examined the boulders and rocks down there?

Answer. I have.

Question 62. Where, in your opinion, did those boulders and rocks come from?

(OBJ.—Mr. HEATH. That is objected to, as the witness has not shown that he has any knowledge or experience sufficient to authorize him to form an opinion.)

635 Answer. I believe they come from the Welch lead. They are rocks of the same appearance, and I think that is where they come from. That is my opinion, if my opinion is worth anything.

Mr. WISE:

Question 63. Do you know where those reduction works are?

Answer. Yes, sir.

Question 64. Are they on the land that William Ryder Powell claims?

Answer. They are on what he claims. That is what I mean in speaking of the two acres where the reduction works are.

Question 65. Then the reduction works are on those two or three acres where you find those boulders?

Answer. Yes, sir.

636 Question 66. And the big boulder; is that below or above the reduction works.

Answer. It is down the gulch from the reduction works.

Cross-examination by Mr. HEATH:

Question 1. You say you have examined the boulders several times with reference to their being rolled down the hill. When did you make that examination?

Answer. Well, I made it in 1864, when I first went there to work.

Question 2. By whose direction?

Answer. By my own, sir—just for my own curiosity.

637 Question 3. Never made any examination since?

Answer. Well, I have been there several times.

Question 4. Never made any examination particularly since?

Answer. Not particularly.

Question 5. And those boulders were at the reduction works that you speak of?

Answer. Yes, sir.

Question 6. The large boulders were below that?

Answer. Yes, sir. It is below the reduction works, in the cut, or near the cut.

Question 7. How far below the surface of the ground was the top of that boulder?

Answer. I could not tell.

638. Question 8. As near as you can tell?

Answer. I didn't see it until after it was blowed out. I don't think that the top of the boulder was below the surface at all. It was then all above the ground.

Question 9. Had Powell dug down to the bottom of the boulder before he blowed it out?

Answer. I think not.

Question 10. Is the bottom of the boulder still on top of the ground?

Answer. I think so. I don't know as it is, but I think so. It is an enormous boulder, I know that.

Question 11. Were there other boulders in the neighborhood, and around that other boulders smaller than this?

Answer. Yes, sir; mind you, when I saw this cut these boul-

639 ders were not in the cut at all; they had been rolled out, or blasted out; but they had been in the cut, I suppose, of course.

Question 12. How deep is it from the surface to the bottom of that cut, at the head of it?

Answer. When I seen it, it wasn't the height of this room.

Question 13. That is, say, then, ten or twelve feet?

Answer. It wasn't that high, say ten feet—it wasn't that high, though, I think, when I saw it.

Question 14. In the bottom of that cut did you not see rocks with marks of quicksilver in them?

Answer. I did not.

Question 15. Did you make an examination to see?

Answer. I did not.

640 Question 16. Therefore you don't know from the appearance of the cut whether——

Answer. Whether there were any below that or not, but I never see any. I have been in the cuts several times, and didn't see any.

Question 17. Did you look to see?

Answer. I did not look particularly to see any more than a man being there would look to see what he could see.

Question 18. If others had made that examination and found rock there, you would be mistaken in saying there was no cinnabar there?

Answer. I might be. Anybody is likely to be mistaken, but I don't think I am.

Question 19. Did you ever dig any prospect holes on that place yourself?

Answer. I dug two, sir.

641 Question 20. Where?

Answer. On the south side.

Question 21. How far from the reduction works?

Answer. Well, not far from the reduction works. It was right upon the hill opposite the reduction works—north of the reduction works.

Question 22. How many feet?

Answer. It may have been one hundred and fifty.

Question 23. Was it within the sticks that are stuck there, within what is called the Hill track?

Answer. It was on the outside of those sticks, if there are any, where they claim to be the line.

Question 24. Do you know where the sticks are?

Answer. I do not.

642 Question 25. Do you recollect a tree standing about a third of the way up the hill from the reduction works?

Answer. I do not, sir.

Question 26. Do you recollect any tree nearly opposite the reduction works?

Answer. I don't recollect it. If there were I was still beyond that, because I was nearly at the top of the hill when I dug the first hole.

Question 27. How deep did you dig it?

Answer. Not deep—until I got to what we call the ledge.

Question 28. Did you take any rock out?

Answer. I took rotten rock out—top rock.

Question 29. Was it ten feet deep?

Answer. I don't think it was.

643 Question 30. Where was the other place?

Answer. On the same side, but a little farther to the west. That was dug until I struck shally rock, and I let it alone, because there was nothing there. I wanted to take up a claim, and if there was anything there I wanted some.

Question 31. How long have you been working on that claim?

Answer. About two years, off and on, altogether.

Question 32. How many years ago did you commence work there?

Answer. I commenced to work there, I tnink, in September or October, 1874.

Question 33. How long did you work?

Answer. I worked nearly two years.

644 Question 34. At that time?

Answer. That is the only time I ever did work.

Question 35. You have not been working there recently?

Answer. No, sir; not for some time; about eighteen months probably.

Question 36. You swear that the working of the mine has been unprofitable to your own knowledge. How do you know it?

Answer. I know it from having to pay assessments and never getting no dividends for one thing, if that is a pretty good thing; and then I know that the mine is in debt; and it is not the first time that the mine has been in debt——

Question 37. (Interrupting.) Never mind.

Answer. That is what you wanted to know.

645 Question 38. I ask you how you know it from your own knowledge?

Answer. I know it from being there and seeing it.

Question 39. How do you know it? Have you looked at the books to ascertain the result of the former mining of the mine?

Answer. No; but I know we had to pay assessments.

Question 40. Might it not have been profitably worked and still be in debt?

Answer. Not very well.

Question 41. Why not?

Answer. Because if a thing is profitably worked it would not be in debt.

Question 42. Could not the managers have worked it profitably and kept the money?

Answer. Oh, they might.

646 Question 43. Isn't that frequently the case?

Answer. Oh, perhaps so. A man can form some idea from the number of men working in the place, and the amount of quicksilver that is taken out.

Question 44. Then you only know from hearsay as to the unprofitableness of the working of the mine?

Answer. Nothing only what I know from paying assessments, and receiving no dividends.

Question 45. When did you pay assessments?

Answer. Not a great while ago.

Question 46. When did you pay the first assessment?

Answer. Well, it is inside of a year.

Question 47. Was that for the debts of the former workings of the mine?

647 Answer. Yes, sir; it must have been, for the mine has had to close.

Question 48. What do I mean by the term "former working of the mine"?

Answer. You mean before the assessments was levied.

Question 49. No, I do not; I mean for the working of the mine before the present company worked it. I ask you what you know of the profitable or unprofitable working of the mine before that company got possession of it?

Answer. I will answer that question. When Oglesby quit the mine it was eight or nine thousand dollars in debt.

Question 50. How do you know it?

Answer. I know it from the book. The book ain't hearsay. You can go and look at the book any time.

648 Question 51. Did you pay any money out for Mr. Oglesby?

Answer. No, sir; I did not.

Question 52. Did you contract any work for him in the mine?

Answer. I did not; I owned stock in the mine at the time.

Question 53. Do you know who worked in the mine?

Answer. I know some of them; yes, sir.

Question 54. Do you know how many men he had?

Answer. Not exactly.

Question 55. Do you know the amount of his pay-rolls?

Answer. I do not.

Question 56. Do you know the amount of his receipts?

649 Answer. I do not.

Question 57. Then do you know of your own knowledge anything with reference to the working by Mr. Oglesby of that mine?

Answer. Only the result. Judging from the result is all I know about it, sir.

Question 58. How do you arrive at that result; how do you derive your knowledge of that result?

Answer. From paying out ten dollars and getting in two.

Question 59. How many flasks of quicksilver were taken out of that mine by Mr. Oglesby?

Answer. I don't know.

Question 60. You say that you wouldn't think that it paid one-eighth of the working expenses of the mine under the present management?

650 Answer. No, sir. I said since the first beginning of the works, since Mr. Oglesby first took hold of the mine.

Question 61. How much has been expended by the companies, all of the companies, since the beginning of the work of developing the mine and putting up improvements?

Answer. That I don't know.

Question 62. How much has been received in full from the mine?

Answer. I don't know that either, exactly.

Question 63. How much has been expended by the present company in building retorts and furnaces, and running tunnels for the purpose of approaching the ledge?

Answer. I could not tell exactly. I could come very near it, though, I think.

651 Question 64. You say it has been worked by men pretending to be miners, and you suppose it was judiciously worked?

Answer. Yes, sir.

Question 65. What is the condition of the retort?

Answer. The present retort?

Question 66. Yes, sir.

Answer. There is no retort there, sir; it is a furnace.

Question 67. What is the condition of the present furnace?

Answer. It is a rock furnace, lined inside with fire-brick and fire-clay.

Question 68. Does it waste any of the quicksilver?

Answer. I could not say, sir.

652 Question 69. Do you not know that it is so imperfectly constructed that in reducing the ore the quicksilver collects on the outside of that furnace in globules?

Answer. I do, sir; very little, though.

Question 70. Then you do not know that it is imperfectly constructed?

Answer. Yes, sir.

Question 71. Then why was it that you stated you didn't know that it was imperfectly constructed a little while ago?

Answer. Imperfect? I have never seen a perfect thing in my life, so far as that is concerned.

Question 72. If quicksilver collects in globules on the outside of a furnace, how can you tell how much quicksilver is wasted?

Question 36. You swear that the working of the mine has been unprofitable to your own knowledge. How do you know it?

Answer. I know it from having to pay assessments and never getting no dividends for one thing, if that is a pretty good thing; and then I know that the mine is in debt; and it is not the first time that the mine has been in debt——

Question 37. (Interrupting.) Never mind.

Answer. That is what you wanted to know.

645 Question 38. I ask you how you know it from your own knowledge?

Answer. I know it from being there and seeing it.

Question 39. How do you know it? Have you looked at the books to ascertain the result of the former mining of the mine?

Answer. No; but I know we had to pay assessments.

Question 40. Might it not have been profitably worked and still be in debt?

Answer. Not very well.

Question 41. Why not?

Answer. Because if a thing is profitably worked it would not be in debt.

Question 42. Could not the managers have worked it profitably and kept the money?

Answer. Oh, they might.

646 Question 43. Isn't that frequently the case?

Answer. Oh, perhaps so. A man can form some idea from the number of men working in the place, and the amount of quicksilver that is taken out.

Question 44. Then you only know from hearsay as to the unprofitableness of the working of the mine?

Answer. Nothing only what I know from paying assessments, and receiving no dividends.

Question 45. When did you pay assessments?

Answer. Not a great while ago.

Question 46. When did you pay the first assessment?

Answer. Well, it is inside of a year.

Question 47. Was that for the debts of the former workings of the mine?

647 Answer. Yes, sir; it must have been, for the mine has had to close.

Question 48. What do I mean by the term "former working of the mine"?

Answer. You mean before the assessments was levied.

Question 49. No, I do not; I mean for the working of the mine before the present company worked it. I ask you what you know of the profitable or unprofitable working of the mine before that company got possession of it?

Answer. I will answer that question. When Oglesby quit the mine it was eight or nine thousand dollars in debt.

Question 50. How do you know it?

Answer. I know it from the book. The book ain't hearsay. You can go and look at the book any time.

648 Question 51. Did you pay any money out for Mr. Oglesby?

Answer. No, sir; I did not.

Question 52. Did you contract any work for him in the mine?

Answer. I did not; I owned stock in the mine at the time.

Question 53. Do you know who worked in the mine?

Answer. I know some of them; yes, sir.

Question 54. Do you know how many men he had?

Answer. Not exactly.

Question 55. Do you know the amount of his pay-rolls?

Answer. I do not.

Question 56. Do you know the amount of his receipts?

649 Answer. I do not.

Question 57. Then do you know of your own knowledge anything with reference to the working by Mr. Oglesby of that mine?

Answer. Only the result. Judging from the result is all I know about it, sir.

Question 58. How do you arrive at that result; how do you derive your knowledge of that result?

Answer. From paying out ten dollars and getting in two.

Question 59. How many flasks of quicksilver were taken out of that mine by Mr. Oglesby?

Answer. I don't know.

Question 60. You say that you wouldn't think that it paid one-eighth of the working expenses of the mine under the present management?

650 Answer. No, sir. I said since the first beginning of the works, since Mr. Oglesby first took hold of the mine.

Question 61. How much has been expended by the companies, all of the companies, since the beginning of the work of developing the mine and putting up improvements?

Answer. That I don't know.

Question 62. How much has been received in full from the mine?

Answer. I don't know that either, exactly.

Question 63. How much has been expended by the present company in building retorts and furnaces, and running tunnels for the purpose of approaching the ledge?

Answer. I could not tell exactly. I could come very near it, though, I think.

651 Question 64. You say it has been worked by men pretending to be miners, and you suppose it was judiciously worked?

Answer. Yes, sir.

Question 65. What is the condition of the retort?

Answer. The present retort?

Question 66. Yes, sir.

Answer. There is no retort there, sir; it is a furnace.

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Question 70. Then you do not know that it is imperfectly constructed?

Answer. Yes, sir.

Question 71. Then why was it that you stated you didn't know that it was imperfectly constructed a little while ago?

Answer. Imperfect? I have never seen a perfect thing in my life, so far as that is concerned.

Question 72. If quicksilver collects in globules on the outside of a furnace, how can you tell how much quicksilver is wasted?

Answer. You can't tell. It is impossible for anybody to tell.

653 Question 73. Would you consider a mine judiciously worked where the retorts wasted quicksilver?

Answer. No; I wouldn't—not entirely.

Question 74. How long since that furnace was built?

Answer. It was built in the fall of 1874 or the spring of 1875.

Question 75. Did the present company reduce any ores in retorts before the building of that furnace?

Answer. They did, sir.

Question 76. How much?

Answer. I couldn't exactly tell you how much.

Question 77. How much were they reducing?

Answer. It was not more than a week or two—a week, I guess,

654 probably. The retorts were old retorts, and worn out, and there was no use of using them.

Question 78. Then the reducing of ores by your present company has been mainly done in this present furnace?

Answer. Yes, sir.

Question 79. Now, do you know right from the start that the quicksilver was wasted in that furnace—right when it was new and just built?

Answer. That has always been my opinion, sir. I don't know about it.

Question 80. Have you seen the globules yourself?

Answer. I have, sir.

Question 81. You say in the Wolf claim that there never has been any of the rock retorted or reduced?

Answer. Not to my knowledge.

655 Question 82. Do you know that there has never been any?

Answer. I do not.

Question 83. Then you know nothing about it, whether there has been or not?

Answer. I have been all through the works.

Question 84. Then you don't know whether there has been or not?

Answer. I know that there has not in any quantity. There may have been a specimen retorted, but that is no retort.

Question 85. How far do you live from that land?

Answer. I lived there right at it.

Question 86. How far, within the last two years, have you lived from that land?

Answer. Within about three miles.

656 Question 87. How often have you been to see that land within the last two years?

Answer. I don't think, within that time, more than once or twice, because I never wanted to go there.

Question 88. Then, during the last two or three years, could not that company have retorted rock and you not have known it?

Answer. They might, in a small way, sir; but not to amount to anything—anything to tell what is what.

Question 89. Have you ever prospected on the Powell claim for the purpose of ascertaining whether or not there was a ledge?

Answer. I haven't, only in those two places.

Question 90. Did you dig enough to find a ledge, if there was one?

657 Answer. I think I went deep enough to know whether or not there was quicksilver rock on the surface.

Question 91. Don't you know that frequently you will find a ledge ten feet below the surface where the surface rock don't show any indication of a ledge?

Answer. I never heard of it in quicksilver. I have in other mines, but never in quicksilver.

Question 92. Have you ever mined for quicksilver except in the place—on these two claims?

Answer. That is all.

Question 93. You have no knowledge as to hidden ledges of quicksilver?

Answer. No, sir; only what I have read about and what other men have told me that were scientific miners.

658 Question 94. Then you have read that if there is a quicksilver ledge ten feet below the surface the rock on the surface will indicate that the ledge is there. Where have you read that?

Answer. I could not tell you. I don't look at the name of the author of the books.

Question 95. What miners have informed you that quicksilver, if it is within ten or fifteen feet of the surface, will show itself upon the surface?

Answer. Mr. Goldsworthy—two of them, father and son, both in the Knox mine—and a man by the name of Powell—Richard Powell, who worked in Almaden, I believe he stated—no relation to this Powell—a man by the name of Dr. Morris—well, I could not name all that I have heard say so.

Question 96. Then all you know is from information?

659 Answer. Of course. What does anybody know, only from information.

Question 97. You saw the boulders blown up. How far below the reduction works was that boulder that was blown up?

Answer. I couldn't say whether it was a hundred or a hundred and fifty, or fifty feet; I never measured it. I never thought it was worth my while to do so; but it was below the reduction works.

Redirect examination by Mr. WISE:

Question 1. When you said you might be mistaken, you meant to say that there is a possibility of it; or did you mean to say that you thought you were mistaken?

660 Answer. In regard to what? When I say I might be mistaken I mean I might be mistaken. I don't mean that I think I am mistaken. I mean there is a possibility that I am mistaken.

Question 2. Are you a part owner of the Welch quicksilver mine?

Answer. I am.

Question 3. How long have you been an owner?

Answer. Ever since about 1874; that is, in the present company. Then I have owned in the other company.

Question 4. Then, when you speak of the unprofitableness of the working of the mine, you speak from your own knowledge?

Answer. Yes, sir.

661 Question 5. How much do you own in it; a good deal?

Answer. Not a great deal of it.

Question 6. Is it divided into shares?

Answer. Yes, sir.

Question 7. Is it an incorporated company?

Answer. It is an incorporated company, sir.

(Signature waived by consent.)

662 *Deposition of J. W. Strickler.*

Examination-in-chief of J. W. STRICKLER by Mr. WISE:

Question 1. Will you please state your name, age, and place of residence?

Answer. My name is J. W. Strickler; my age is 50; and I reside in Contra Costa County, California. Antioch is my post-office address.

Question 2. Do you know William Ryder Powell?

Answer. I do.

Question 3. Do you know the land in question?

Answer. I do.

Question 4. Do you know it by its section and quarter section?

Answer. I do.

663 Question 5. Please describe the land.

Answer. It is the northeast quarter of section 29, township 1 north, of range 1 east, Mount Diablo base and meridian.

Question 6. How long have you known that land?

Answer. I have known it ever since 1865, I think.

Question 7. Do you know the Welsh mining claim—where it is?

Answer. I do.

Question 8. How long have you known that?

Answer. I have known that not so long; I have known that about three years. That is on the southeast quarter of the same section.

Question 9. Have you examined the ledge on the Welsh mine?

664 (OBJ.—Objected to as irrelevant.)

Answer. I have examined the mine and the reported ledge on the Welsh quarter, so called, of the southeast quarter.

Question 10. What was the result of the examination?

(OBJ.—Mr. HEATH. I object to the question as irrelevant. The witness has not shown that he is competent to judge with reference to any matter connected with mines and mining.)

Answer. Well, having had considerable experience as a miner, I examined it as such with a view of learning somewhat of its value; and being connected with a claimant of the land who claimed that it was non-mineral in production, I examined it with a view of deter-

665 mining for myself as a miner, having had considerable experience with a mine, as to its mineral-bearing qualities, whether it would be more valuable for mineral than for any other purpose. I found it situated on the side of Mount Diablo—the north side—where the base of the mountain seems to rise very abruptly from the surface, and this is on the edge of the base of the mountain, some—I would guess—one hundred and fifty feet above the level of a ravine, below, or north of the Welch mine, on which reduction-works are situated, and which reduction-works are situated on the northeast quarter of section 29, the claim in question, and where, from all appearances, all of the ores that have from time to time been worked by the various companies attempting to work the Welsh Consolidated (so-called) quicksilver mine have reduced all their ores, and where they take all these ores to, from the southeast quarter, or Welsh mine, to reduce

666 them; the furnace and reduction-works being on the so-called Powell claim, that being situated at the bottom of the ravine, in a little flat containing some two or more acres of flat land, or not flat, but with a gradual descent; thence down to the eastern line of the northeast quarter of the said section 29, the claim in question. The ravine, I believe, runs there. If I mistake not, all of the ravine passes through the Powell claim; and all of the cinnabar that is in that

ravine seems to have come there from these reduction-works, or from the hillside north of it, the mountain side, on which the Welsh Consolidated quicksilver mine is situated. It seems so, for having examined the northern side of the ravine, on which the bulk of the Powell claim, so called, or the claim in question, is situated, I find no evidences of cinnabar whatsoever. Across the hill, north of the Welsh Quicksilver Mining Company's reduction-works, a little east of
667 north their is a tunnel run twenty-one paces into the hill through the rock. I saw some cinnabar. Mr. Mulligan examined that with me; we paced it—measured it. I saw some cinnabar at the mouth of that tunnel that evidently was carried there from some other point, there being no seam visible in the tunnel, which was run by Mr. Oglesby, it is said. Of my own knowledge, I don't know who run it; but at any rate the tunnel was there, and there was no visible evidence of quicksilver in that tunnel that I could find. I saw some quicksilver boulders—rock—in a ravine on the northern side of this claim, where, in 1866, I think, Widow Rogers lived, on this same quarter section, the quarter section in question; I saw some quicksilver boulders in that ravine that looked to me as though they had been packed there. They had been broken off—had been mined; and there is no hole, no
668 place dug out on the surface from which they could have been taken visible to me. And I examined with a view of determining for myself whether or not that was a quicksilver-bearing quartz section, and I saw there those boulders. Otherwise I have seen no evidence whatever of quicksilver on that land.

Question 11. The ledge on the Welsh quicksilver mine, what kind of a ledge is it?

(OBJ.—Objected to as immaterial.)

Answer. Well, Mount Diablo seems to be a solid mass of rock. Of course here and there there is a little piece of earth. It is a kind of blue sandstone; that is, there is some sandstone in it. It seems to be a primitive rock, some portions of it. It is a conglomerate, so called, at least I have been so taught to call it—a conglomerate mass; and
669 in this rock we find little seams of quicksilver. We found boulders at the base of this mountain, on the southeast quarter of section 29, immediately south of and adjoining the claim in question, and about four hundred yards, I should say, from the southern line of the claim in question we found large boulders of sandstone and conglomerate rock—a kind of blue shaly rock, interspersed with quicksilver—I mean cinnabar. Some of it is quite rich in spots, and some of it is not rich. Some of it looks as if it was limestone, and I think there is some limestone mixed in with it, and that seems to be the character of the rock. There is some shale—considerable shale there. What is called shale, a rock of a slaty nature.

Question 12. What experience have you had in mining; for how long?

670 Answer. Well, I came to the country in 1849, and I mined in silver and in gold, or rather gold quartz, during 1851, and subsequently I was mixed in with it more or less up to 1861, off and on. I have seen more of it done than I have done myself. I have been frequently paid as an expert to go and find ledges in Nevada from croppings on other claims—tracing out.

Question 13. So that you have had experience in gold quartz mining in the county of Nevada?

Answer. In the State of Nevada. Also in Mariposa County, in California, and in Sierra County, and in El Dorado County.

Question 14. Have you ever been upon William Ryder Powell's land with a view to discover whether or not there was any mineral there?

Answer. I have.

Question 15. When?

671 Answer. I was there some five months ago, and two months previous to th at, that was seven months ago, and about one month previous to that, that would make eight months ago; five, seven, and eight months since, at three distinct times. One time I took an expert with me.

Question 16. Who was he?

Answer. Thomas Uren.

Question 17. At whose request did you go?

Answer. I went there at the request of—I don't know that I went there particularly—yes, I can't say; it seems to me that my attention was called to the matter by Mr. McLaughlin, or some of his attaches, to examine into and report the character of that land. I think it came from Charles McLaughlin's office.

672 Question 18. You went there, then, for the express purpose of examining this land?

Answer. Yes, sir; and I took Mr. Uren with me as an expert, and he is an expert of considerable note, and he said——

Mr. HEATH. (Interrupting.) Never mind what he said.

Mr. WISE:

Question 19. Did you make a thorough examination on those three occasions?

Answer. I did.

Question 20. What kind of an examination did you make?

Answer. I examined all of the holes that I could find and the tunnels; and I examined the surface of the earth, and I contrasted it

673 with that piece of land lying immediately south of it, which showed quicksilver boulders. I found no such evidences on that northeast quarter as on the other quarter. In fact, I found none except in that ravine immediately below the reduction-works.

Mr. HEATH. I move to strike out the answer and all evidence heretofore given by the witness in relation to the nature of this ground, for the reason that the witness has not shown that he possesses the knowledge requisite to be classed as an expert.

Mr. WISE:

Question 21. Did you use a pan to pan out any cinnabar?

Answer. I did not.

Question 22. How did you examine the surface?

Answer. I made no excavations. I was advised by many—

674 well, we could see quicksilver ore scattered all through this ravine, which come from the Welsh mine, from the smelting works. I found none at any other point. We examined the surface, and examined the ore as retorted, and found very strong evidences of quicksilver by disc'loration of the rock, or the hue of the rock lying through the ravine; and it was evidently taken from the Welsh mine, because it had been mined, and there was no mine on the northeastern quarter. It could not have been taken from the northeast quarter from the fact that there was no excavation there from which it could have been taken out.

Mr. HEATH. (Interrupting.) I move to strike out all that he has stated with reference to his opinions, as it is not an answer to the ques-

tion asked, and there is no evidence to show that this man is qualified to testify as an expert.

675 Mr. WISE:

Question 23. Go on, Mr. Strickler.

Answer. There was some holes in the side of the hills near the south line of this quarter section in question. I examined the bottom of those, and the dirt having been taken from them—and I found them at different points—and found no evidences of cinnabar having been taken from any of them; and I must draw the conclusion that the cinnabar in the ravine, at and below the smelting works situated in the ravine, was the source from which all the quicksilver emanated—must have emanated from the Welsh mine.

Mr. HEATH. I move to strike out all the testimony given since my last objection, because the witness is not competent to testify as an expert and merely draws conclusions without stating the facts.

Mr. WISE:

676 Question 24. Since you have been living where you live now, you have been more or less engaged in farming and attending to farming, haven't you?

Answer. Yes, sir.

Question 25. Do you know whether this quarter section, the northeast quarter of section 29, in township 1 north, of range 1 east is fit for grain, for agricultural, or grazing purposes?

(OBJ.—Mr. HEATH. I object to the question, because there is no evidence to show that the witness is competent to judge as to the valuation of land for agricultural purposes, or for grazing purposes, or for any other purposes whatever, he having shown that he is a miner, and not a farmer.)

Mr. WISE:

Question 26. Tell what it is fit for, and why you say it is fit for that.

(OBJ.—The same objection.)

677 Answer. Well, I think it is good horticultural land. Portions of it are good for agricultural purposes; and it is better adapted to grazing purposes than either, from the fact that it produces grasses, and, I think, it has water on it the year round upon the surface. It seems to me that it has; at least I have noticed water there every time I have looked for it, whenever I have been there; and water is very close to the surface. It has also an abundance of timber on it—common, scrubby white-oak timber.

Question 27. Have you ever seen any grain growing on this land?

Answer. Well, I have seen stuff growing there, whether it was grain or what it was. I have seen some of it under cultivation. Mrs. Rogers, I believe, in 1865 or 1866, had an enclosure there, and I think
678 there was some kind of vegetation growing there. I don't remember what it was. She lived there then.

Question 28. What was the quality of the vegetation with regard to showing any quality of the land?

(The same objection.)

Answer. I didn't examine the vegetation particularly so as to know what it was; but it would grow grain, or grow anything—portions of it.

Question 29. How much of it?

Answer. About a third of it, I should think, could be cultivated.

Question 30. The balance of it is fit for what?

Answer. Well, it is fit for horticultural purposes and grazing purposes, and is valuable for its timber.

Question 31. This northeast quarter that we are speaking of,
679 is it more valuable for mining or for agricultural purposes?

(OBJ.—Mr. HEATH. I object to that, for the reason that the party is not competent to testify upon that subject.)

Answer. Well, there being no mineral in sight on it, there having been none discovered on it, it is not known to be valuable for mineral purposes in anyway whatever, and it is certainly more valuable for anything else, though there might be mineral in the ground if it was only dug for. But there is none visible anywhere on the quarter section that can be worked or reduced to advantage, except in the ravine, and that was brought there from the Welsh Quicksilver Mining Company's mine; and I am advised that that don't belong to Mr. Powell.

680 Mr. HEATH. I move to strike out that portion of the answer relating to the rock being brought there from the Welch consolidated mine, and that it is not owned by Mr. Powell.

Mr. WISE:

Question 32. Is it valuable. I don't mean valuable in the sense in which the word is ordinarily used, but is it at all valuable for agricultural and grazing purposes, and for the timber that is on it?

Answer. Yes, sir; it is.

Question 33. So that in your opinion it is valueless for mining purposes, and is valuable for grazing, and for the timber that is on it?

(OBJ.—Objected to as leading.)

Answer. Yes, sir.

Question 34. I see that Powell is spoken of here by some of these
681 witnesses as Doctor Powell, and is continually described by the counsel as Doctor Powell. Is he a doctor?

(OBJ.—Objected to as irrelevant.)

Answer. I think not.

Question 35. Why do they call him doctor, do you know?

(OBJ.—The same objection.)

Answer. His wife says she left him fourteen years ago, or he left her fourteen years ago, and has called himself Doctor Ryder Powell since, or Doctor Ryder (produces a paper). Here is a letter from her, and here is a letter from the postmaster of his town in New York. You can introduce these letters in evidence if you want to.

(OBJ.—Mr. HEATH. I object to the evidence as impertinent, irrelevant, insulting, and unheard of.)

682 The WITNESS. It is not done in that spirit, sir.

Mr. WISE:

Question 36. Is he a doctor, or not?

(OBJ.—Objected to as immaterial.)

Answer. He is not, as I am advised.

Cross-examination by Mr. HEATH:

Question 37. You say you have had considerable experience as a miner?

Answer. Yes, sir.

Question 38. Wait till I get the question out—more from seeing mining done than from doing it yourself?

Answer. Yes, sir.

683 Question 39. When did you first commence mining?

Answer. In 1849.

Question 40. How long did you work as a miner?

Answer. Off and on ever since.

Question 41. How long did you work as a miner in the year 1849?

Answer. Well, my mind has became so much blockaded by accumulations of rust from the lapse of time which has passed from that time to this that I could not remember the time.

Question 42. Did you work at mining one week in 1849?

Answer. Yes, sir; I know that. We will say one week.

Question 43. Did you work any more than one week as a miner?

684 Answer. I don't remember.

Question 44. What did you do?

Answer. Well, I was working at placer mining then; working with a rocker; packed mud and dug it, containing auriferous matter, you know; containing gold and one thing or other. Sometime' I would rock what we called the cradle; at other times I would pack dirt, and at other times I would dig.

Question 45. How long did you work in 1850 as a miner?

Answer. I don't remember.

Question 46. Did you have charge of a mine for other persons in 1850?

Answer. I never had charge of a mine as superintendent for other persons; only to settle legal difficulties. I would compose the

685 court and counsel. I would *I would* settle the matters on my own recognizance.

Question 47. As a judge and arbitrator?

Answer. And arbitrator; yes, sir.

Question 48. You would judge all about rocks and the character of rocks, wouldn't you?

Answer. No; I wouldn't.

Question 49. Did you do any quartz mining during the year 1850?

Answer. I think not—not in 1850. In 1851 I did.

Question 50. Where?

Answer. In Mariposa County.

Question 51. What kind of rock?

Answer. Gold-bearing quartz rock.

Question 52. How long were you engaged in mining for gold-

686 bearing quartz rock?

Answer. For a day or two, somewhere in 1851.

Question 53. Take the aggregate for that year, how long were you engaged in mining?

Answer. Oh, I don't remember. It is too long.

Question 54. Taking the next year, 1852. What kind of mining were you engaged in in 1852?

Answer. I don't think I was engaged in mining much in 1852.

Question 55. Were you engaged in 1853 in mining?

Answer. Not up to 1855, and then forward; from 1855 up.

Question 56. What kind of mining?

Answer. Gold.

687 Question 57. From 1855 to the present time, what portion of your time were you engaged in mining?

Answer. From 1855 to 1860, I was around where a good deal of mining was done, had nothing to do with it actively myself, but saw it done; and in 1861, and thenceforward to December, the 13th, I think, of December, 1861, I was engaged in actual quartz mining in Nevada.

Question 58. In the State of Nevada?

Answer. Yes, sir. Sinking shafts and——

Question 59. (Interrupting.) What kind of mineral?

Answer. Silver and gold bearing rock.

Question 60. From that time up to the present what have you been engaged in?

Answer. From that time to the present I have partially been
688 engaged in coal mining, and I was land agent for the Western Pacific Railroad Company, managing their farming and agricultural or grazing lands. Seven or eight years of that time been practicing law and farming—from that time up to the present time, and I am engaged in farming now, and doing that kind of business, practicing a little law occasionally.

Question 61. What quicksilver mine have you ever had charge of, if any?

Answer. Well, I have had charge of—I had a contract some year or two ago with Charles McLaughlin to mine for quicksilver, on Marsh Creek. We found some boulders there. I managed it enough to determine whether or not there was sufficient quicksilver there to pay. That was on the same line of this Mount Diablo mine.

Question 62. When was that?

689 Answer. That is about two years since.

Question 63. How long were you there engaged in that mine, to work it?

Answer. Oh, well, I have been over there once a week—sometimes once a week for a month, then again not for three months; been there occasionally—semi-occasionally.

Question 64. Then all the experience or knowledge that you have of quicksilver mining is what you have done at this Marsh Creek mine?

Answer. No, sir.

Question 65. What other experience have you had?

Answer. I have seen quicksilver mining done up in other parts of the country.

690 Question 66. Where?

Answer. In Napa.

Question 67. When?

Answer. A year and a half since.

Question 68. How long were you at Napa, at the mine?

Answer. I was there three or four days. I wasn't at the mine only a few hours—the Knox mine, I believe it is called.

Question 69. Where were you next engaged in quicksilver mining?

Answer. I was not engaged in quicksilver mining at any of these points; only saw it, and I can accomplish anything when I see it, and would learn enough about mining in one glance to be able to conduct a mine.

691 Question 70. I will ask you to state the next mine that you examined.

Answer. The Welsh Consolidated.

Question 71. How long were you engaged there?

Answer. I was engaged there three distinct times. I was there eight, seven, and five months since.

Question 72. How long each time did you stay at the Welsh mine?

Answer. Only a few hours—one entire day, I think, and then a few hours the next two times.

Question 73. How much rock did you retort at the Welsh mine?

Answer. I did not retort any.

Question 74. At the Napa mine—the Knox mine; how much did you see retorted?

Answer. Oh, I cannot tell; an immense quantity.

692 Question 75. Did you make an examination of the rock before they put it into the furnace?

Answer. I looked at it; yes, sir.

Question 76. Did you weigh the amount that was taken out?

Answer. I did not.

Question 77. Made no examination to see the percentage that it contained?

Answer. I was not so curious.

Question 78. Where was your next experience in quicksilver mining?

Answer. I have had none since.

Question 79. Do I understand you to swear that you have had no experience in quicksilver mining, except at the Knox and Welch mine?

Answer. You do not; because my memory may not serve me.

693 I have known of quicksilver long, but that is all that I remember at this time.

Question 80. You say that when you were at the Welch mine you saw the retorts and saw the places where the rock had been taken out?

Answer. The retorts were there.

Question 81. And you say all the rock had been reduced. Now, then, how do you know that all the rock from the Welch mine had been reduced——

Answer. (Interrupting.) I didn't say it all had been reduced. It seemed to me that all of it had been reduced there, because I saw no evidence anywhere else of any reduction-works, or where any rock could have been reduced. There was no visible evidence upon the surface.

694 Question 82. When did you first see the Welch mine?

Answer. Well, about three years ago, I think I stated.

Question 83. If that mine had been worked eight years ago you would have had no knowledge of its working at that time, would you?

Answer. I could have had it if I wanted to.

Question 84. Have you any knowledge of its having been worked eight years ago?

Answer. Only through hearsay.

Question 85. Then you do not know that eight years ago the Welch mine reduced ore at the place where the retorts and furnace now are?

Answer. Well, it must have been there, for there is no evidence of any ore having been reduced elsewhere, and that is the most convenient place.

695 Question 86. Then do you swear, from your own knowledge, that eight years ago the Welch mine retorted the ore at the place where the reduction works are now situated?

Answer. From information and belief, I do.

Question 87. You say that all the cinnabar that is in Powell's land seems to have come from the Welch mine. Do you state that such is a fact?

Answer. It seems so to me.

Question 88. How do you know it comes from the Welch claim?

Answer. From information and belief.

Question 89. What is your information?

Answer. It is in the ravines immediately under croppings and

696 boulders situated on the Welch mine, and——

Question 90. (Interrupting.) Your information is in that ravine, eh?

Answer. I say these pieces of rock are situated in a ravine immediately under and below boulders and croppings situated on the mountain side.

Question 91. Where you saw those boulders, how deep did you dig?

Answer. I didn't dig.

Question 92. Did you go under the earth at all to see what was there?

Answer. I did not; I was in the tunnel a little ways. I went into every hole I seen around there, examining, hunting, seeing whether there was any merit or demerit. I was passing upon this question for the claimant of the land, and he took my word for it that
697 there was no quicksilver there. He took my word for it. Take that as answer, and quit. And I was not interested pro or con.

Question 93. I will ask you to state whether those boulders you saw there might not be the croppings of a ledge?

Answer. What boulders?

Question 94. In the ravine on that land.

Answer. A sheep might kill a butcher, too, but it isn't very likely.

Question 95. Might not the boulders you saw in the ravine be the croppings of a ledge?

Answer. I don't think they might be, from the very fact that if there were a ledge there it would have been opened. These various miners up there, I know, from information and belief, have been mining and hunting for a ledge ever since 1861, and haven't found it, to
698 my knowledge, and as there hasn't been any ledge found, I think there is no ledge there in that region—certainly none known.

Question 96. If you will answer my question that I put to you I will be obliged to you. I will put it again, and see if I can get an answer. Might not the boulders you saw in the ravine be the croppings of a ledge?

Answer. I don't think it is possible.

Question 97. You were sent there by the defendant in this action, were you not?

Answer. Yes, sir. I think he requested me by letter to examine the character of those lands, and report as to whether they were mineral-bearing or not.

Question 98. When did you first make an examination for the purpose of reporting to Mr. McLaughlin?

699 Answer. I think it was some nine months since.

Question 99. For the first time?

Answer. Yes, sir. I took Mr. Wren with me, who has been manager of the quicksilver mines in Almaden for eleven years.

Question 100. Did you make an examination of the rock in the bottom of the shafts on the side of the hill fronting towards Powell's house?

Answer. Way down next to his house?

Question 101. I mean, did you examine the holes on the side of that hill beyond the ravine?

Answer. I can't tell what ravine you mean. There is several of them.

Question 102. Is his house in a ravine, or not?

Answer. It is not in a ravine; it is on the side of a ravine.

700 Question 103. Is there a ravine where the reduction-works are?

Answer. Yes, sir.

Question 104. Is there a hill between the house and that ravine that the reduction-works are in?

Answer. There is several.

Question 105. Did you see any prospect holes dug on the side of the hill next to his house?

Answer. I don't remember. If there was any there I seen them; for I examined every——

Question 106. (Interrupting.) Did you go to the bottom of any prospect holes on that side?

Answer. You can reach down to the bottom of them from the surface.

Question 107. If there were prospect holes ten feet deep on that
701 side of the hill, did you see such?

Answer. I saw no prospect holes ten feet deep there.

Question 108. Did you see any prospect holes on that land eight feet deep?

Answer. I did not measure them. I don't think there were. I don't think I saw any of them quite so deep. I didn't see no quicksilver in any hole that I examined, and I aimed to examine every hole on it.

Question 109. Did you go down into those holes and examined the rock at the bottom of the holes?

Answer. I examined the dirt that was taken out of the holes.

Question 110. Did you examine the rock at the bottom of the holes?

Answer. It was not necessary; I could see it.

702 Question 111. Then I understand you to say that you did not examine the rock at the bottom of the holes?

Answer. There was none of those holes deep enough to make it necessary, that I could see. You could step down into one and step right out of it again.

Question 112. Then there wasn't a hole more than two or three feet deep that you saw?

Answer. Except some tunnels.

Question 113. I say, the holes; not the tunnels.

Answer. Shafts, you mean?

Question 114. Yes, shafts or prospect holes?

Answer. None that I saw, and I aimed to see every one that was on it. I examined with a view to see them.

703 Question 115. In your direct examination you stated that you had examined the bottom of the holes. How did you make that examination?

Answer. I examined every hole, I say, on the place, that I could see. I could do it with my naked eye. The most of them I can step into with one foot and out with the other.

Question 116. Did you do that?

Answer. I don't remember whether I did or not. It was not necessary. My eyes are very acute. I could see. I could see no evidence of cinnabar. If I could see any evidences of cinnabar I should have gone down into those holes.

Question 117. Did you have a shovel or pick with you?

Answer. I did not. I had a stick.

704 Question 118. Did you disturb the earth that was at the bottom of these holes to see what was in them?

Answer. I did not.

Question 119. If there is earth on the bottom of a hole, can you make an examination of that earth?

Answer. Quicksilver leaves evidences where it is taken out, and if you see no evidences it is not necessary to investigate it.

Question 120. Do you say that on that side of the slope nearest to Powell's house there is no quicksilver mixed with the surface earth?

Answer. None that I see.

Question 121. You did not see any?

Answer. I did not.

Question 122. If there had been any mixed through there
705 would you have seen it?

Answer. I certainly would, at the points I examined, for I examined pretty thoroughly.

Question 123. And you saw every hole that was dug on that slope, you think?

Answer. Yes, sir, I thought I did; I was believing I did.

Question 124. And in none of those holes did you see any earth that had been thrown out that contained cinnabar mixed in fine particles thfough the earth?

Answer. No, sir; none of that red precipitate of quicksilver.

Question 125. Then you would swear that on that slope there was no red precipitate of quicksilver?

Answer. No; I don't swear that. How do I know what is un-
706 der that earth, or him, or anybody else that has never opened it? I can't probe it with my eyes. If there was a mine there I would see it; but I don't know what is under the earth. It may be rich in quicksilver; I could not tell.

Question 126. Then you say the reason you say there is no quicksilver on that land is because Doctor Powell has not opened it?

Answer. I said there was none visible upon the surface; and by no excavations that have been made has any been exposed to view. But what is in that earth it is impossible for anybody to compass, when there has been no excavation made.

Question 127. If there is cinnabar mixed with the surface earth on that side of the slope next to Powell's house, could it have been deposited there from the Welch mine?

Answer. In what way?

707 Question 128. In any way?

Answer. By volcanic action?

Question 129. In any way?

Answer. Mount Diablo seems to rise right up and break through the surface of the valley, and the bed-rock seems to pitch each way from it, north and south, east and west, and whether or not this cinnabar that might be mixed with the surface of the soil on the slope immediately south of Powell's house and north of the Welch mine could have been thrown there by this volcanic action, it is impossible for me to say.

Question 130. If there is cinnabar mixed with the surface earth upon the side of the slope next to Powell's house, could it have been precipitated there from the Welch mine?

708 Answer. It could have been by volcanic action.

Question 131. Have you seen any evidences of volcanic action in connection with the ledge or the Welch mine?

Answer. I have seen what seems to me to be the evidences of volcanic action in and around and about Mount Diablo. The evidences are these: Mount Diablo seems to have raised up and broken the surface of the earth, bringing with it primary formation, secondary formation, pitching to the west, north, and south. These are evidences that it was thrown up there by volcanic action. That is the opinion that I adduce from those facts, that there is secondary formation north, south, east, and west, and primary formation on the mountain.

And more, there are oyster shells that are petrified on
709 Mount Diablo, showing that it might once have been the bed of the sea. These facts cause me to believe that that little cinnabar might have been deposited on the north side of the hill near Powell's house from the Welch mine, if any cinnabar there be there.

Question 132. If there is cinnabar mixed with the earth on the slope next to Powell's house, could it have been washed there by the action of rains and storms from the Welch lead or ledge?

Answer. No, sir; I think not.

Question 133. How many acres of land are there in the valley surrounding the house that Powell lives in that are fit for grain purposes within the enclosure that is there?

Answer. Oh, I don't know how many acres there is there.

710 Question 134. Are there fifty?

Answer. You could enclose about twenty acres of land there that you could cultivate to an advantage in and about Mr. Ryder Powell's house, in that ravine above and below it, and in and about it.

Question 135. Is it not a fact that every acre that is susceptible to the plow is already under cultivation or enclosed?

Answer. I think not; not on that quarter section.

Question 136. Do you not know that fully one-half of that land that is enclosed is not fit for cultivation?

Answer. Well, it is not as profitable for harvesting as it is for horticultural purposes, or other purposes.

Question 137. Did you see any fruit trees growing upon that land?

711 Answer. I did not.

Question 138. You did not see any growing upon that land at all?

Answer. I saw some growing on land of that character below there.

Question 139. I mean on that particular piece of land.

Answer. I don't think there was any planted there; if so, I haven't heard of it.

Question 140. Were you down there on the enclosed part of the land?

Answer. Not recently.

Question 144. When you were up there did you not see a row of apple trees and peach trees?

Answer. I did not see them.

Question 142. If there had been apple trees and peach trees
712 there would you have seen them?

Answer. I may have noticed them. I was examining that land with a view of discovering whether or not it was non-mineral or mineral land.

Question 143. What kind of vegitation would grow on that place where Mrs. Rogers lived? What was growing there at the time you speak of?

Answer. I don't know that.

Question 144. Was it rank?

Answer. Not very.

Question 145. What month was it?

Answer. I was there different months in the year.

Question 146. You have no recollection whether or not it was rank?

Answer. I have not.

713 Question 147. You have no idea about the character of that soil?

Answer. I do. I was a farmer, brought up to the business, and I claim to know all about it. I can tell whether land will produce or not. I can tell whether it contains any alluvium or not; and if it don't it isn't very profitable to grow anything.

Question 148. You say that you saw in the ravine next to Powell's house some rock?

Answer. I did.

Question 149. Whereabouts was that rock?

Answer. It was in the creek, or about the creek, above the house; somebody else called my attention to it, and I went there to look at it.

Question 150. Did you not see some that was partially buried
714 in the stream that was lying there imbedded in the earth?

Answer. I think I saw all that was there. I don't remember its exact position.

Question 151. The point that I am driving at is, did you not see boulders?

Answer. I saw rock that was moved there.

Question 152. How do you know it was moved there?

Answer. It bore that appearance.

Question 153. Did you see anybody move it there?

Answer. I did not.

Question 154. You saw it lying there, and from its appearance you believe it had been carried there?

Answer. Yes, sir.

715 Question 155. Did you not see rock that contained cinnabar that was imbedded on the surface so that the top would appear above the surface that was imbedded in the earth in that stream and near that stream?

Answer. I don't think I saw any there that had not been moved there—transplanted.

Question 156. Did you see any that had been transplanted that was covered partially with earth?

Answer. I don't remember whether it was covered or not, but what I seen there had evidently been carried there from some other place.

Question 157. You swear positively that it was carried there from some other place?

Answer. It didn't grow there, certainly. It came there not by
716 the operations of inert matter. It carried with it the unmistakeable evidences of having been moved.

Question 158. Are you in the employ of Mr. McLaughlin at present?

Answer. Yes, sir.

Question 159. How long have you been in his employ?

Answer. About seven years.

Question 160. Mr. McLaughlin directed you to make a thorough, careful examination of this place, with a view of ascertaining its character?

Answer. Mr. McLaughlin asked me to examine the land as to its mineral or non-mineral character, and I reported non-mineral.

Question 161. And it was at his request that the examination and report was made?

717 Answer. Yes, sir, by his request, I think; to the best of my knowledge, it was, or some of his attachés; some man in authority under him; he was the boss.

Redirect examination by Mr. WISE:

Question 162. You say that you did some mining on Marsh Creek?

Answer. Yes, sir.

Question 163. Was that on this land?

Answer. No; this mineral belt seems to extend a little north of east and south of west, and it extends on down to Marsh Creek.

Question 164. How far from this land?

Answer. It must have been four or five miles—five miles.

718 Question 165. What was the result of your mining there, favorable or otherwise?

(OBJ.—Objected to as immaterial.)

Answer. Unfavorable. We had searched for quicksilver in all the openings, but none below the surface could we find, and there was a great deal of prospecting done.

Question 166. You say that you are in Mr. MacLaughlin's employ; what do you mean by that?

Answer. Well, I was employed by him to look out for the rents of his land—agricultural and grazing land—to collect his rents and transfer them to him.

Question 167. When you do anything he pays you for it?

Answer. Yes, sir.

719 Question 168. You are not in his regular employ, and do not receive a salary; but whenever you do anything for him he pays you for it?

Answer. Yes, sir.

Question 169. That is what you mean by saying that you are in his employ?

Answer. Yes, sir. I am not employed by the month or year by him.

Question 170. You say that this report was made at the request of Mr. McLaughlin?

Answer. To the best of my recollection.

Question 171. Did you have any intimation of how you must report, or anything of the kind?

Answer. No, sir.

Question 172. Was there any request to report it mineral or non-mineral land?

720 Answer. Certainly not. It was to determine somewhat of its character. My idea was this: that if I pronounced it mineral land that he would have no contest with the claimant—no further contest. If I pronounced it non-mineral he would contest the claimant's claim.

Question 173. You were requested, then, to report the truth with regard to it?

Answer. Why, of course; I could not be requested to report anything else.

Mr. HEATH:

Question 174. You came down here at this time in Mr. MacLaughlin's employ?

Answer. I am here as a witness in his case.

Question 175. You are paid by him?

Answer. I am paid like any other witness.

721 Question 176. If this case had been stopped you would not now have had the present employment, would you?

Answer. Why, if there was no case I wouldn't be here as a witness, as a matter of course.

(Signature waived by consent.)

722 *Deposition of Sam'l Phillips.*

MONDAY, *Oct.* 9, 1877.

Examination-in-chief of SAMUEL PHILLIPS, by Mr. WISE:

Question 1. What is your name, age, residence, and occupation?

Answer. Name, Samuel Phillips; age, fifty-three; residence, San Francisco; occupation, a mining secretary.

Question 2. What quicksilver mine are you connected with?

Answer. The Welch Consolidated Quicksilver Mining Company on the quarter section.

Question 3. How long have you been connected with that mining company?

Answer. I think about ten or eleven years. I don't know.

723 Question 4. Do you know the receipts and expenditures of that mine during that time?

(OBJ.—Objected to as immaterial and irrelevant.)

Answer. I have not come prepared to state the exact amount; but I can tell within a few thousand dollars.

Question 5. Has the expenses of or the receipts from the mine been greater?

(Objected to as immaterial & irrelevant.)

Answer. The expenditures have been greater than the receipts.

Question 6. About how much has the expenditure exceeded the receipts, if you remember?

(Same objection.)

724 Answer. As near as I remember, many thousand dollars; I can't tell exactly.

Question 7. How has the mine been worked—advantageously, as a general rule, or not?

(Same objection.)

Answer. I think it has not been advantageously worked.

Question 8. Is there, where that mine is, a ledge—a body of quicksilver or mineral of any kind, that will pay to work?

(Same objection.)

Answer. I can't say of my own knowledge.

Question 9. Do you know William Ryder Powell and where he lives?

725 Answer. Yes; I know part of the ground that he claims.

Question 10. How is that situated with reference to the mine?

Answer. It joins it.

Question 11. How far is his section from the mine?

Answer. I have never been much over his ground, and I am not very much acquainted with it. I understand the lines adjoined. I think this deposit is pitching towards his land.

Question 12. Is the Welch quicksilver mine a ledge or a deposit?

(OBJ.—Objected to as immaterial and irrelevant.)

Answer. There are various theories about it. Some contend that it is a ledge, and others that it is a deposit. Of my own knowl-

726 edge I can't say, because I am not a miner.

Question 13. What is the difference between a ledge and a deposit?

Answer. I understand that a ledge is where it has defined walls and very extensive, going down some distance; but a deposit is only a small body—a pocket.

Question 14. How far is the nearest body of ore from the quarter section line of Powell's land, as near as you can judge?

(Objected to as irrelevant and immaterial.)

Answer. I can't state; I don't know what it is.

Question 15. Is your mine being worked now?

(Same objection.)

727 Answer. I believe not at this moment.

Question 15½. How long since it was worked?

(Same objection.)

Answer. Within a few months.

Question 16. Why did it stop?

(OBJ.—Same objection.)

Answer. I suppose it stopped because it didn't pay.

Question 17. Do you know whether any examination has been made of William Ryder Powell's ground by the Welch Consolidated Company?

(Same objection.)

Answer. No; I am not aware.

728 Question 18. How is Powell's land situated with reference to the mine; is it down-hill or up-hill?

(Same objection.)

Answer. I purchased a piece of land from Powell which is down-hill from the mine. There is a ravine near the works.

Question 19. Are your works situated on the land which you bought from Powell?

(Same objection.)

Answer. I think so.

Question 20. Which direction from the works would the washings, rock, and tailings be carried?

(Same objection.)

Answer. We have a dump there, and we throw them into this gulch.

729 Question 21. What effect would the rains and floods have on the dumped rock there?

(Same objection.)

Answer. I don't know. Time would do almost anything; carry them almost anywhere.

Question 22. Now, can you tell about how much the expenditures have exceeded the receipts in your mine during the time you have been connected with it?

(Same objection.)

Answer. I can't tell; many thousand dollars. I don't know how much.

Question 23. Now, in speaking of the excess, do you mean the whole cost of the works or the current expenses?

(Same objection.)

730 Answer. In speaking of that, I mean the cost of the works and everything.

Question 24. Do you know whether the current receipts have exceeded the expenditures without reference to the cost of the works? I mean the running expenses.

(Same objection.)

Answer. I think it has.

Question 25. Are you sure of that?

(Same objection.)

Answer. No; I am not sure.

Question 26. How long would it take you to tell that from your books?

(Same objection.)

731 Answer. A day or two.

Question 27. How have the bodies of quicksilver been found; in regular deposits or in aggregated deposits?

(Same objection.)

Answer. I don't know; I couldn't answer.

Question 28. Who now has charge of your mine on the ground, at the works?

(Same objection.)

Answer. Bendixen was put in charge by the company; and I have not been officially informed that he has left, but I understand so from outside parties.

Question 29. How long has Bendixen been connected with that mine?

(Objected to as irrelevant and immaterial.)

732 Answer. On and off for several years. I don't know how many.

Question 30. What position has he occupied?

(Same objection.)

Answer. He has been employed as a miner, and the last year been in charge of the mine. Not quite a year, nearly three quarters of a year.

Question 31. Has Mr. Bendixen been mining the mine on his own hook during the last year?

(Same objection.)

Answer. There was a resolution passed to empower Bendixen to work the mine to pay off some debts. That was in January, 1877.

Question 32. What debts were those?

733 (Objected to as immaterial.)

Answer. Debts due to Beddixen and others.

Question 33. Were they to give up their debts for the privilege of working the mine, or were they to take their debts out of the profits?

(Objected as immaterial and irrelevant.)

Answer. First, the running expenses of this mine were to be paid, and then if there was any surplus it was to be divided up pro rata among certain creditors named in the agreement.

Question 34. Did they stop work; and, if so, why did they stop?

(Objected to as irrelevant and immaterial, and the answer must of necessity be hearsay.)

734 Answer. I have not been informed.

Question 35. Was any returns to be made to the company of any receipts?

(Same objection.)

Answer. I can't answer. I don't know. I don't remember any special agreement on that subject.

Question 36. How many mines are there in that neighborhood, if you know?

(Objected to as immaterial and irrelevant.)

Answer. I don't know.

Question 37. Do you know whether works of any kind have been put up at any place there except at your mine?

(Same objection.)

735 Answer. I can't answer that.

Cross-examination by Mr. HEATH:

Question 38. What appliances have you upon your mind—the Welch Consolidated—to reduce the ores?

Answer. We have a furnace.

Question 39. How long is it since that furnace first went into operation?

Answer. Over two years, I should think.

Question 40. Is that furnace in good condition to save the quicksilver?

Answer. No; it is not.

Question 41. Has it ever been in good condition to save the quicksilver?

736 Answer. No; I believe not.

Question 42. Have not the fumes penetrated to the outside of the furnace and there formed globules of quicksilver upon the outside of the furnace?

Answer. I have seen globules of quicksilver on the outside of the furnace.

Question 43. Could they have been deposited there except by the fumes penetrating from the inside?

Answer. It is possible that they might have been put there, but I don't think they were; it is not likely.

Redirect examination by Mr. WISE:

737 Question 44. Won't any furnace, after being used a considerable time, show globules on the outside?

Answer. This is the only quicksilver furnace I ever saw.

Question 45. When you speak of the furnace not being in good condition, what do you mean?

Answer. I mean we have lost considerable quicksilver by its inefficiency.

Question 46. Why haven't the company put up a good one?

(Objected to as irrelevant and immaterial.)

Answer. They thought they were putting up a good one when this was put up. Since then they have not had the means to put up another if they had wished to do so.

Question 47. Was it not because they didn't think the mine would justify it?

738 (Objected to as immaterial and irrelevant and not proper redirect examination.)

Answer. I don't know what their views were.

Recross-examination by Mr. HEATH:

Question 48. State as near as you can the cost of that furnace.

Answer. I don't know the cost.

Question 49. Was it several thousand—four or five thousand dollars—everything?

Answer. It cost in the neighborhood of three or four thousand dollars, including condensers and everything.

(Here a continuance is taken until Tuesday, October 9th, 1877, at 2 o'clock p. m.)

739 *Deposition of Thos. Bell.*

TUESDAY, *October 9th*, 1877.

Examination-in-chief of THOMAS BELL, by Mr. WISE:

Question 1. State your name, age, place of residence, and occupation.

Answer. Name, Thomas Bell; age, over twenty-one years; place of residence, San Francisco; occupation, merchant.

Question 2. Do you know a man by the name of Richard Taylor?

Answer. No.

Question 3. Did you ever send by yourself, or with Mr. Parrott, or with any other person, the said Taylor over the State to hunt for quicksilver mines for you?

740 Answer. No.

Question 4. Are you sure that that is correct?

Answer. I have no recollection whatever of such a man.

Cross-examination by Mr. HEATH:

Question 1. Have you, during the last fifteen years, sent any persons to look after quicksilver mines?

Answer, Oh, I have sent several parties. I have sent Sherman Day and also William A. Dennis.

Question 2. Have you not sent men whose names you cannot now recollect?

Answer. I don't think I ever sent anybody except Sherman Day or Mr. Dennis.

741 Question 3. You are connected with the Almaden quicksilver mines, are you not?

Answer. I am selling the quicksilver for the new Almaden, yes; and in former years the house of which I was a partner was the owner of the mine.

Question 4. During the time that you were an owner in the Almaden Quicksilver Mining Company, was not Mr. Taylor under your employ, or in the employ of the company?

Answer. I was not personally an owner. I had no personal ownership in the mine. Mr. Barron, my partner, had. We never kept any record of all the working men that were at the mine. This man may possibly have been employed at the mine.

Question 5. Might he not have examined quicksilver mines for you——

742 Answer. (Interrupting.) No; because we would not employ a man we didn't know to examine quicksilver mines.

Question 6. Might he not have been sent by yourself or by others for you to ascertain the quality of quicksilver mines in some portions of the State?

Answer. I don't think so. I can't conceive of any reason why we should send a man we didn't know. It is almost impossible.

Question 7. Did you send any one to examine the quicksilver mines around Mount Diablo?

Answer. No.

Question 8. Have you ever made any examination of the quicksilver mines in that region?

Answer. No.

(Signature waived by consent.)

743 *Deposition of Duncan McNee.*

DUNCAN MCNEE, recalled for complainant by consent.

Mr. HEATH:

Question 1. Look at the traced map now produced and state what it is.

Answer. It is a map of part of township 1 north, 1 east.

(The map above referred to is offered in evidence by complainant's counsel, marked Complainant's Exhibit.)

Cross-examination by Mr. WISE:

Question 1. When was the first map of the northeast quarter
744 of section 29, township 1 north, range 1 east, first filed in the United States land office, in this city?

Answer. On the 19th day of July, 1867.

Question 2. How long did the office continue to act upon that map?

Answer. Until October 17th, 1873.

Question 3. Who sent the map to the land office?

Answer. The United States surveyor-general for California.

Question 4. That was the regular way of transacting business?

Answer. Of course.

Question 5. Did not the department at one time notify you that a patent had been issued before the land had been surveyed?

(OBJ.—Objected to as secondary evidence.)

745 Answer. I believe so.

Question 6. And did you reply to that?

(OBJ.—The same objection.)

Answer. My recollection is we did.

Question 7. Have you got those letters here?

Answer. Yes, sir; on the 14th of March, 1874—letter "N"—the Commissioner of the General Land Office decided that the northeast quarter of section 29, 1 north, 1 east, was erroneously patented to the Western Pacific Railroad Company on the 31st of May, 1870. At that time the land in question had not been surveyed; that is what they say.

Question 8. Was that a fact, that it had not been surveyed?

Answer. It was not a fact.

746 Question 9. What did you inform the department in answer to that?

Answer. On the 30th of March, 1874, the register and receiver replied to that letter. Their letter commenced with the usual heading—"United States Land Office, San Francisco, March 30, 1874," and was as follows:

"Hon. WILLIS DRUM'OND,
"Com'r Gen'l Land Office:

"SIR: Referring to your letter 'N' of the 14th, in relation to the claim of Wm. Rider Powell to the NE. ¼ of sec. 29, T. 1 N., R. 1 E., we have now to report that we have, this day, called upon Charles McLaughlin, esq., land agent W. P. R. R. Co., to surrender the title to said land to the United States.

"In this connection I would state that said land was returned as surveyed by the plat filed in this office July 19th, 1867, but
747 was not returned as mineral land until Oct. 17th, 1873.

"Very respectfully, your ob'd't serv't,

"H. J. ROLLINS, *Register.*
"CHA'S H. CHAMBERLAIN,
"Receiver."

Redirect examination by Mr. HEATH:

Question 1. Have the field-notes for the map of July 19, 1867, been filed in this office?

Answer. I could not say.

Question 2. Will you look at the original map of the section in question, filed July 19, 1867, and examine the entries made upon the north

half of the northeast quarter, and state what writing you see upon that map?

748 Answer. I see on the north half of the northwest quarter the figures "80," and on the northeast quarter the figures "160," referring to the area of the same, eighty acres and one hundred and sixty acres.

Question 3. What writing do you see upon it?

Answer. There is no writing at all on those quarters.

Question 4. On the northeast quarter of section 30 what writing do you find?

Answer. On the north half of the northeast quarter of 30 occurs the word "Cinnabar," or, to put it plainer, indications of cinnabar extend east and west along the north half of the northeast quarter of 30.

Question 5. What writing is there upon sections 30, 29, 31,
749 and 32, with reference to the character of the land?

Answer. Steep mountains, unfit for cultivation; indications of cinnabar.

Mr. WISE:

Question 6. Does that writing apply to all four sections, or to section 29?

Answer. I don't pretend to say what it applies to.

(Signature waived by consent.)

750 WEDNESDAY, *October 31st*, 1877.

Present, A. Heath, for the complainant; T. R. Wise, for the defendant.

Admission on behalf of defendants.

ADMISSION.

Mr. WISE. It is admitted that the following certificate is made by the register and receiver upon application for railroad land.

B.

UNITED STATES LAND OFFICE, , 18 .

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the under selection by , the duly authorized agent, and we have tested the accuracy of said list by the plats and records of this office, and that
751 we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands, nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to as allowed by the act of Congress, approved July 1st, 1864, and contemplated by the circular of instructions, dated January 24th, 1867, addressed by the Commissioner of the General Land Office to registers and receivers of the United States land offices; and that

the said company have paid to the undersigned, the receiver, the
752 full sum of in full payment and discharge of said fees.

, *Register.*
, *Receiver.*

Mr. HEATH. It is also admitted by the defendant, Charles McLaughlin, that patent No. 5 is the patent conveying this land from the government to the Western Pacific Railroad Company, and that the same be used upon the trial as evidence on the part of plaintiff, and a copy may be made at any time that it is required.

753 *Deposition of R. F. Knox.*

R. F. KNOX recalled for defendant.

Examined by Mr. WISE:

Question 1. You spoke in your examination, when you were called before, of going up to examine this place of William R. Powell's.

Answer. No, sir; I did not say anything of the kind. I said I went up to examine another mine, at least—oh, yes, I did go to examine it too, I believe, but not the doctor's; but this other Mr. Powell. What is the man's name; that is this side of there?

Mr. POWELL. It is the Welsch claim.

Answer. No; I did not go to look at that. It was a piece of
754 land three-quarters of a mile this side of that.

Mr. WISE. Very well; that will do; that identifies it sufficiently.

Mr. POWELL. The Marsh claim?

Answer. The Marsh claim; that was what I went to look at.

Mr. WISE:

Question 2. Did you examine the Marsh mine?

Answer. Yes, sir; I went over it.

Question 3. What did you go up there for?

(OBJ.—Mr. HEATH. I object to that as immaterial and irrelevant.)

Answer. I went up to look at this claim; this land of Mr. Marsh.

755 Mr. WISE:

Question 4. With reference to purchasing it, I mean?

Answer. Not with a view to purchasing myself. It was recommended by some other parties that thought there could be an arrangement made there that would be good.

Question 5. Now, was any arrangement made; and, if so, why not——

(OBJ.—Mr. HEATH. That question is objected to as irrelevant and immaterial.)

Answer. There was no arrangement made.

Mr. WISE:

Question 6. Why not?

Answer. Well, there had not been sufficient done to show what was there. In other words, there was not enough in sight.

756 Question 7. You did not see enough in sight to justify it?

Answer. Yes, sir. If there had been enough in sight negotiations might have gone on a little further and resulted in something.

Question 8. In your opinion, then, you did not see anything that would pay?

(OBJ.—Mr. HEATH. That is objected to as irrelevant and immaterial.)

Answer. I did not see anything outside that would justify spending money, with a good round valuation to the land.

Mr. HEATH. Now, in the first place, I will put in, in regular form, those field-notes of the last survey.

757 (OBJ.—Mr. WISE. I object to the evidence as being immaterial and irrelevant, and as not being competent to affect title after the patent is issued.)

FIELD-NOTES.—Field-notes of the subdivision lines of township 1 north, range 1 east, Mount Diablo meridian, California, by John C. Partridge, deputy surveyor, under his contract of December 28th, 1872. Surveyed January 14th, 1873. Survey completed January 15th, 1873.

758 *Deposition of G. W. Strong.*

G. W. STRONG, called for the complainant, sworn:

Mr. HEATH:

Question 1. State your name, age, residence, and occupation.

Answer. G. W. Strong; 47 years of age; residence, this city; and by occupation, assayer and metallurgist.

Question 2. How long have you been engaged as an assayer?

Answer. A little over twenty-one years.

Question 3. What experience, if any, have you had in reducing cinnabar or quicksilver ores?

Answer. I have had a great deal of experience in handling cinnabar ores in our place of business.

Question 4. About how many years have you handled them?

759 Answer. It is about twelve years since I began to pay attention to cinnabar. Before that it was only occasionally that lots came in that we had to test.

Question 5. During the past twelve years have you almost or quite monthly tested and reduced cinnabar ores?

Answer. There have been times that we do it daily; that I have done that work daily. Then again, perhaps for a month or two, or such a matter, there might be none to do. Then again, during the excited times, there was a great deal of it to do.

Question 6. I believe you have a crushing-machine connected with your assay office, have you not?

Answer. Yes, sir.

Question 7. Do you know the northeast quarter of section 29,

760 township 1 north, range 1 east, Mount Diablo meridian?

Answer. Yes, sir.

Question 8. State whether you made an examination of that quarter section with reference to what it contained of minerals.

Answer. Yes, sir.

Question 9. When?

Answer. It was the last of August that I visited that; about the last of August.

Question 10. State what you found upon that quarter section.

(OBJ.—Mr. WISE. I object to the question because it is connected with the plaintiff's case, which was closed, and is not in rebuttal of anything that was given by the defence.)

761 Answer. Well, I examined the ground, the quarter section here spoken of in this paper—this report or statement. I went

up there prepared with tools, a shovel and pick, and powder and fuse, and pan and mortar, and drills, and so on, to prospect, and I travelled over the whole ground and along the boundary lines, and prospected at different places; washed out cinnabar with a pan.

Question 11. What did you find with reference to rock? State what you found there.

Answer. We found a place which is called the Powell mine. It is known by that name there. We found Cinnabar there. We dug down in the hard rock and put in blasts and blew it out, and found good rich rock.

Question 12. Was that upon the surface of the ground?

762 Answer. No; it was in a cut. It was in the cut along the south line.

Question 13. From the appearance of that cut and the rock in the cut, was that placed there by a convulsion of nature, or is it the croppings of a ledge, from its appearance?

Answer. There is no ledge. As I understand it is a deposit.

Question 14. It is a deposit?

Answer. Yes, sir; it is not a regular defined vein or ledge. That is not found generally in cinnabar districts.

Question 15. Ledges are not generally found in cinnabar districts?

Answer. No, sir; it is in deposits and chambers, and so on. This seemed to be a deposit. Of course it is not explored deep; but it is a cut a hundred and fifty feet in length.

763 Question 16. How deep is that cut at the end of the cut next to the bank?

Answer. Well, it is—I could not say how many feet, but it seemed to have been filled up some.

Question 17. Fifteen or twenty feet?

Answer. It possibly has been that much, but I could not say positively now. It is sloughed in; filled in along down the middle. Where I dug down and put in the blasts it was very solid, and to considerable depth. I cannot say how many feet, probably 10 or 12 feet; something that way.

Question 18. You put a blast in?

Answer. I did.

Question 19. State whether the rock was solid in the ground.

Answer. Solid.

Question 20. In the rock?

764 Answer. Yes, sir; to all appearance. It appeared to be solid.

Question 21. What was the result of that blast?

Answer. We exploded the blast and gathered up some of the rock, and found it rich in cinnabar.

Question 22. Rich cinnabar?

Answer. Yes, sir.

Question 23. What per cent. would you judge the rock to be?

Answer. Well, I should say it was from 3 to 10; somewhere along there. Of course I could not state exactly. It seemed to be a rich deposit there.

Question 24. State whether there was any appearance of that having been a slide from the mountain.

765 Answer. Well, I examined as to that matter. I did not consider it to be a slide. I thought it was fixed there. It was not a slide.

Question 25. This rock that you blasted out was some 10 or 12 feet from the surface of the ground, was it?

Answer. I won't say how far, but probably about that; about 10 feet down from the surface, 8 to 10 feet, somewhere about that.

Question 26. Did you do any washing of dirt there?

Answer. Yes; I found cinnabar in the dirt—in the clay. I have some with me here that I brought from there. It shows the cinnabar.

Question 27. Did you state whether you made any examination
766 of pits that had been dug on the place, at other places than this?

Answer. Yes, sir.

Question 28. State what you found as a result of that examination?

Answer. I found a tunnel marked "excavation" here and cuts and a ditch of water.

Question 29. In the earth—did you find any cinnabar in the earth in those pits?

Answer. Yes, sir; along towards the north edge of the quarter-section. I prospected first and dug up some dirt; solid dirt and gravel, out of the bank where it was probable no one had disturbed it, and I washed it out carefully and found cinnabar there, and also at other places; towards the north end of the claim also.

Question 30. You took this below the surface?

767 Answer. Yes, sir; I took off the surface myself, and dug down in a hole and took up some dirt and washed it, and there was the appearance of the cinnabar.

Question 31. You dug this hole separate from other places?

Answer. Yes; it was by itself.

Question 32. Did you make any examination of the pits that were dug to see whether it was surface cinnabar?

Answer. No, sir; we did not go in any prospect shafts at all. I was satisfied it was——

Question 33. State whether, with proper ditch, &c., for working and properly working, that there is cinnabar enough in the surface earth to pay for mining it?

Answer. That is hard to tell. I cannot tell that. It is neces-
768 sary to explore a great deal to find out whether it would pay. It might pay very largely by hydraulicking. There is, it seems to me, a belt there, a cinnabar belt, that is scattered everywhere there.

Question 34. What kind of ground is it for agriculture?

Answer. It is pretty rough through that portion. I think it would be pretty hard to make a living off it.

Question 35. Was there any negotiation on the ground anywhere there?

Answer. It was dried up. How it would look in winter time I could not say. There may be some green grass there.

Question 36. You saw the creek there?

Answer. Yes, sir.

769 Question 37. Was there any water running in the creek?

Answer. Not at that time. There was simply pools, puddles.

Question 38. There was water but none running?

Answer. Yes, sir.

Question 39. There was still water there in the creek?

Answer. Yes, sir. That is where we washed.

Question 40. Yes, certainly. Was there any cinnabar in the dumps of that cut that had been taken out?

Answer. There was quite a lot of rock laying about there. I should think 20 or 40 tons, perhaps 20 to 40 tons, I could not state. I took a look at it, of course, and I could judge somewhere near how many tons. Perhaps 30 tons; we will say 30 to 40.

770 Question 41. In the face of this cut at the head, what was the character of the rock? Was it cinnabar?

Answer. Yes; it was cinnabar rock.

Question 42. Did you notice on the sides whether the sides were cinnabar or not?

Answer. In the dirt?

Question 43. Yes, sir.

Answer. A portion of the cut is filled, sloughed in. Below that I took some dirt, down below where it was caved in.

Question 44. Which side was it sloughed in from?

Answer. From the east; the east side. That dirt seemed to have cinnabar. It seemed to be all peppered off all round.

771 Question 45. State if you examined each 40 of the 160?

Answer. Yes, sir.

Question 46. What did you find on each one?

Answer. These prospects.

Question 47. All through it?

Answer. Yes, sir. Right by the house we made prospects there, and washed out, and then further to the west, where there had been some digging.

Question 48. Well, now——

Answer. (Interrupting.) This is some of the rock in this box here. No one has handled it; that is just as I found it; and I lifted it out myself.

Question 49. Is this sample an average sample of the rock that you saw there?

772 Answer. Yes; about the average of that I saw on the dump.

Question 50. An average of what was taken out at that point?

Answer. Yes, it is.

Question 51. You took this out yourself?

Answer. Yes, sir.

Question 52. Has any one had posession of it but yourself?

Answer. No, sir.

Question 53. This box you have had in your possession all the time?

Answer. Yes, sir.

Question 54. No one has disturbed it?

Answer. No, sir.

Mr. HEATH. I will put this box in as an exhibit. The box is marked Exhibit G.

773 Question 55. Look at this diagram marked "X." State whether that is a fair diagram of the mine as you saw it.

Answer. It is not a correct diagram of anything particularly, but it is approximating to it, I might say. His house is here (showing), and barn, as I saw it; this creek passing down between there and the county road passing down there. I know by this that I was on that ground there.

Question 56. The point I am driving at is more particularly on account of the testimony of other witnesses. This marked "Welsh Mine," is that correctly represented there?

Answer. It is near this line; it is very near it.

Question 57. That which is marked "open cut," is that correct?

774 Answer. Yes, sir.

Cross-examination—Mr. WISE:

Question 58. How do you know this land?

Answer. Well, I know it by Mr. Powell's residence there, and the general configuration of the country.

Question 59. You only know it by Mr. Powell pointing it out to you?

Answer. Yes, sir.

Question 60. How do you know where the boundaries were?

Answer. He was with me.

Question 61. Do you know anything about the boundaries, ex-
775 cept what he told you?

Answer. I saw the boundaries.

Question 62. How did you see them?

Answer. I went to the corner stakes.

Question 63. The corner stakes of what?

Answer. This section 29.

Question 64. How do you know it is section 29?

Answer. I am pretty certain.

Question 65. How do you know?

Answer. By the general configuration of the country.

Question 66. You could tell by the general configuration of the country that this was section 29?

Answer. Yes; the northeast quarter of it.

776 Question 67. You know that?

Answer. I believe it to be.

Question 68. What township and range?

Answer. One north, and range one east.

Question 69. How do you know it is township 1 north and range 1 east?

Answer. By the general configuration of the country and the government stakes there.

Question 70. Did the government stakes have any marks on them?

Answer. Yes, sir.

Question 71. What marks were they?

Answer. I did make a memorandum of those marks, but I don't know that I have it in my possession now.

Question 72. What were the marks, do you know?

777 Answer. I cannot say now. I know well enough what they are, but I cannot say now.

Question 73. Now, in your direct examination, you said you had been assayer here?

Answer. Yes, sir; that is my business.

Question 74. Was you ever a prospector or a geologist?

Answer. Yes, sir; I paid considerable attention to it.

Question 75. Did you ever do any prospecting before this time?

Answer. Yes, sir.

Question 76. Where?

Answer. Up in Shasta and in French Gulch.

Question 77. Do you know where the Welsh mine is?

778 Answer. Yes, sir.

Question 78. How far is this land from the Welsh mine?

Answer. The Welsh works are on the south line; the Welsh works are on the south line of this.

Question 79. The furnace?

Answer. Yes, sir.

Question 80. The furnace on this land?

Answer. Yes; right on the south line of this land, I think.

Question 81. Is the Welsh mine on this land?

Answer. No, sir.

Question 82. How far is that from this other land?

Answer. That seems to be the west.

779 Question 83. From the Welsh mine down to this land what is the formation of the land, level or descending?

Answer. It is descending.

Question 84. The rock that you say you blasted, how large a rock is it?

Answer. I don't know how deep it went.

Question 85. How much of that rock did you see there? Did it seem to be a boulder, or did it seem to come from another place, or was it naturally there?

Answer. Naturally there.

Question 86. How much of the rock did you see?

Answer. Well, if I had kept on working there probably I could have got it——

780 Question 87. (Interrupting.) I asked you how much of the rock you saw?

Answer. Well, I dug down on a large—what appeared to be a solid large deposit that stuck right into the rocks. I could not tell the extent of it.

Question 88. You saw it was a boulder a great deal larger than the amount of rock you saw?

Answer. Yes, sir; of course I could not see but 2 or 3 feet square.

Question 89. There are boulders there infinitely larger than you saw of that?

Answer. Yes, sir.

Question 90. Prospecting and tilling what is mineral land is different from crushing ore and being a mineralogist?

Answer. Yes, sir; I have paid attention to that.

781 Question 91. Where did you do so?

Answer. At examining mines frequently.

Question 92. Where?

Answer. Around Shasta. I have been up to Auburn, and through there, El Dorado County. And I have been also at Virginia City, examining mines there.

Question 93. What kind of mines?

Answer. Gold and silver.

Question 94. What else?

Answer. Copper.

Question 95. Anything else?

Answer. Antimony and lead and zinc. I have never been about a cinnabar working mine.

Question 96. You have not?

782 Answer. No, sir.

Question 97. Whom did you go for, these different tours, to examine mines?

Answer. Whom did I go for?

Question 98. Yes; for yourself?

Answer. Some of our own matters where I have been employed.

Question 99. Of your own matters; how?

Answer. On our own account.

Question 100. To examine mines for what purpose?

Answer. For the purpose of finding out about them.

Question 101. Whether they were mines or not?

Answer. Whether they were valuable.

Question 102. For the purpose of purchasing?

783 Answer. Well, not especially for that; but to get information about them for the benefit of ourselves and others.

Question 103. How many trips did you ever take, examining mines, like that?

Answer. Well, I could not remember now; but a great many.

Question 104. You went up there this time at the request of Mr. Powell?

Answer. Yes, sir.

Question 105. He paid you to go up there?

Answer. He will pay me, I suppose.

Question 106. You went in his employ?

Answer. Yes, sir.

Question 107. And you did what he told you to?

Answer. Yes, sir; he told me to go and examine the ground and see what was there.

784 Mr. HEATH:

Question 108. You said that you went up in Mr. Powell's employ and did what he told you?

Answer. No, sir; I did not state so.

Mr. WISE. He said, to do what he employed him to do.

Mr. HEATH:

Question 109. You was taken up there by Dr. Powell to examine with reference to the amount of quicksilver there was there?

Answer. In regard to the prospect; to see what it would prospect.

Question 110. On purpose to testify in this case?

Answer. No; not to testify in the case. I did not want to be called in the case. I went up on purpose to see; because I have been acquainted with him a number of years, and he has told me a great deal about his property there, and he wished me to see it; when I do

785 go and see it he makes me a witness.

Question 111. In making excavations you made them where you wished, without reference to Dr. Powell?

Answer. Yes, sir; I made them just where I wanted to. No one has any influence over me when I do a thing of that kind.

Question 112. I understand you to say that this cut, as marked on the diagram, is near the south line, and near the Welsh——

Answer. Near the center——

Question 113. Near the reduction works?

Answer. Yes, sir.

Mr. WISE:

Question 114. Which did you find the most quicksilver in, this land you call Powell's or the Welsh quicksilver mine; the most cinnabar? Which did you find the greatest deposit of quicksilver in?

786 Answer. Well, the Powell mine is not developed so much as the other mines around there. I probably saw more rock around the other works.

787 *Certificate to depositions.*

In the circuit court of the United States, ninth circuit, district of California.

THE UNITED STATES OF AMERICA
vs.
THE WESTERN PACIFIC RAILROAD COMPANY and Charles McLaughlin.

I, Joseph F. O'Beirne, examiner in chancery, duly appointed by the circuit court of the United States for the ninth circuit in and for the district of California, do hereby certify that on the several days mentioned in the deposition hereto annexed I was attended at my office in the city and county of San Francisco, district of California, by the counsel and witnesses aforesaid; that the said witnesses were by me duly sworn and examined and their depositions reduced to writing,
788 the reading of said depositions to and the signing thereof by said witnesses having been waived by stipulation of counsel of the respective parties herein.

Attest, &c., J. F. O'BEIRNE,
Examiner.

(Endorsed:) Filed 9 October, 1877. L. S. B. Sawyer, clerk, by J. F' O'Beirne, dep. cl'k.

789 *Field-notes exhibit.*

Field-notes of the subdivision lines of township 1 north, range 1 east, Mt. Diablo meridian, California, by John C. Partridge, deputy surveyor, under his contract of Dec. 28th, 1872.

Survey commenced January 14th, 1873.
Survey completed " 15, 1873.

T. 1, R. 1 E., Mt. D. M.

From the cor. to sec's 19, 20, 29, and 30, T. 1 N., R. 1 E., already established, I run—

South, bet. sec's 29 and 30.

Var. 15° 34 E.

.05. Brook, 8 l'ks wide, co. NE., ascend sharp spur.

19.94. Post and bearing-tree, mentioned in the field-notes, furnished me from the office.

790 40.00. Set stone, 16 x 10 x 4, in a stone mound for $\frac{1}{4}$ sec. cor., as per inst.; descend.

43.75. Brook, 6 l'ks wide, co. E.; ascend.

48.00. Summit of spur; over spurs still ascending.

80.00. Set stone, 36 x 20 x 12, in stone mound on the summit of high spur for cor. to sec's 29, 30, 31, and 32, from which pine, 20 in. dia., bears S. 26¼ E. 63 l'ks. Large boulder, marked thus †, bears S. 29½ W. 11 l'ks.

Land rough & broken; spurs of mountains. Soil 3d rate. Timber scattering; pine and oak.

East on random line, bet. sec's 29 and 32.

Var. 15° 58′ E.

Descend along SE. slope.
22.25. Brook, 10 l'ks wide; course N. 84 E., along N. slope.
40.00. Set temp. ¼ sec. post.
41.25. Same brook, 15 l'ks wide; course S. 76 E.
Enter dense chemisel along south slope.
74.00. Leave chemisal, bears N. & S.
791 80.30. M't N. & S. line at point 21 l'ks N. of cor. to sec's 28, 29, 32, and 33, from which cor. I run—
N. 89.51 W. on true line.
Var. 15° 58 E.
40.15. Set stone 22 x 16 x 12 in stone mound for ¼ sec. cor., as per inst.
80.30. Cor. to sec's 29, 30, 31, 32.
Land abrupt; east slope. Soil 3d rate. No timber.
West, bet. sec's 30 and 31.
Var. 15 58 E.
Ascend spur, trending NE.
11.20. Small brook, 5 l'ks wide, runs northeast.
22.50. Summit of spur, descend 32.60; brook, 8 l'ks wide, runs NE.; ascend—
40.00. Set stone 20 x 12 x 10 in stone mound for ¼ sec. cor., as per inst.
54.00. Summit spur trends N; descend—
68.25. Brook, 8 l'ks wide, runs NW.
792 84.46. Int. meridian line at point 8.10 ch's south of cor. to sec's 25 and 36, T. 1 N., R. 1 W., where I set a post in a stone mound for cor. to sec's 30 and 31 T. 1 N., R. 1 E., as per inst., from which a juniper cedar, 8 in. dia., bears S. 42 E.; dist. 10 l'ks.
Land rough and mountainous. Soil 3d rate. No timber.
January 14th, 1873.

South, on random line, bet. sec's 31 and 32.
Var. 15° 58′ E; descend—
2.05. Ravine course E; ascend –
16.50. Summit of spur tends E.; descend over sharp spurs and cañons.
40.00. Set temp. ¼ sec. cor.
66.30. Brook, 16 l'ks wide, runs E.
81.10. Intersect base line at point 63 l'ks west of cor. to sec's
793 5, 6, 31, and 32, from which corner I run N. 27 W. on a true line.
Var. 16° 4′ E.
41.10. Set stone 26 x 16 x 12 for ¼. See corner in a stone mound, as per inst.
81.10. Corner to sec's 29, 30, 31, & 32.
Land, rough mountains. Soil 3d rate. No timber.
From the cor. to sec's 32 & 33, 4 & 5, in base line, I run north on a random line bet. sec's 32 and 33.
Var. 15° 39′ E.
43. Ravine, course SE., over rolling hills.
22.60. Ravine course northeast.
40.53. A point 22 l'ks east of the ¼ sec. cor. between sec's 32 and 33, already established, from which ¼ sec. cor. I run S. 19 E. on true line.
Var. 15° 45′ E.
40.53. The cor. to sec's 32, 33, 4, and 5.
Land rolling. Soil 2d rate. Scattering live and white oak timber.
January 15, 1873.

794 GENERAL DESCRIPTION.

The portion of this township which I have subdivided is very rough and broken and mountainous, and is more valuable for mining purposes than any other, particularly sec. 29, 30, and 31. Some very flattering prospects of cinnabar have been obtained in sec's 29 and 30, and in sec. 29 there are works which are reported to have cost $4,000 to $5,000 for the reduction of this ore. Sec. 29, 30, 31, and 32, should be held as mineral land, as they are undoubtedly valuable mines of cinnabar and copper in each.

U. S. SURVEYOR-GENERAL'S OFFICE,
San Francisco, Nov. 9th, 1875.

795 I, James T. Stratton, U. S. surveyor-general for California, do hereby certify that the foregoing transcript has been correctly copied from approved original field-notes, as the same remain of record and on file in this office.

Attest my hand and official seal the day and date hereinabove written.

[SEAL.]

JAS. T. STRATTON,
U. S. Surveyor-General for California.

Memorandum of ore tested and assayed by Strong, at No. 10 *Stevenson street. Deposited by John Dònnor, San Francisco, July* 2*d*, 1877.

No. of deposit.	Description of ore.	Weight of ore.		Fire assay of ore, per ton.				Yield of ore, per ton.				Actual value of metal.				Charges.	
		Gross.	Net.	Gold.	Silver.	Copper.	Lead.	Gold.	Silver.	Copper.	Lead.	Gold.	Silver.	Copper.	Lead.	Dollars.	Cts.

Cinnabar ore, 7 lbs. Crushed, sampled, & tested. Present, find quicksilver $6\frac{5}{10}$ p'r c't.
Exp. paid, 5.

STRONG & CO.

797 COMPLAINANT'S EXHIBIT D.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., M'ch 14, 1874.

REGISTER and RECEIVER,
San Francisco, Cal:

GENTLEMEN: I have carefully examined the papers transmitted with your letter of the 11' Nov. last, in the matter of the application of Wm. Rider Powell for patent for the NE. ¼, sec. 29, T. 1 N., R. 1 E., Mt. Do. mer.

This tract it appears was erroneously patented to the Western Pacific Railroad on the 31st May, 1870. At that time the land in question had not been surveyed.

In your letter you state that the township plat was filed in your office Oct. 17, 1873, said land being returned as mineral land.

In view of the facts in the case, you will call upon said railroad company to relinquish to the United States the said NE. ¼, sec. 29,
798 T. 1 N., R. 1 E., Mt. Do. mer.

Should said company neglect to relinquish said tract, as hereinbefore indicated, within thirty days from the date of your notification to them, you will receive Mr. Powers' application for patent, upon his full compliance with the law and instructions.

You will inform all parties in interest, and acknowledge the receipt hereof, giving the date of such notification.

Very respectfully, your ob'd't s'v't,

WILLIS DRUMMOND,
Commissioner.

U. S. LAND OFFICE,
San Francisco, Cal., July 5, 1877.

I do hereby certify that the foregoing is a full, true, and correct copy of the original now on file in this office.

WM. R. WHEATON,
Register.

(Endorsed:) Complainant's Exhibit D. J. F. O'B., examiner.

799 UNITED STATES OF AMERICA,
United States Land Office, San Francisco District, California:

I, H. G. Rollins, register of said office, do hereby certify the annexed to be a full, true, and correct copy of the original plat of T. 1 N., R. 1 E., Mt. D. mer., filed Oct. 17, 1873, so far as pertains to sections 19, 20, 29, 30, 31, & 32, the said plat being now on file in this office and in my custody; that I have carefully compared the same with said original, and that the same is a correct transcript therefrom, and of the whole of such original.

In testimony whereof I have hereunto set my hand, at San Francisco, this 9th day of Nov., A. D. 1875.

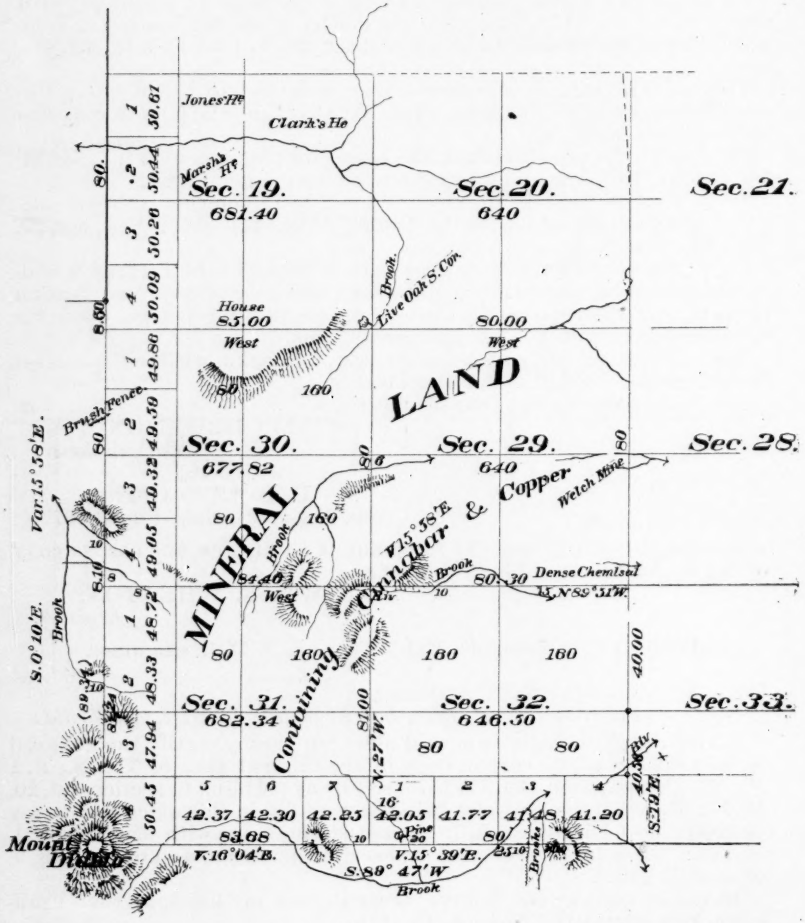
H. G. ROLLINS,
Register.

(Here follows map marked page 799.)

Map.—Exhibit referred to in Duncan McNee's test'y.

WESTERN PACIFIC R. R. CO. ET AL.
vs.
THE UNITED STATES. } No. 505. Page 799.

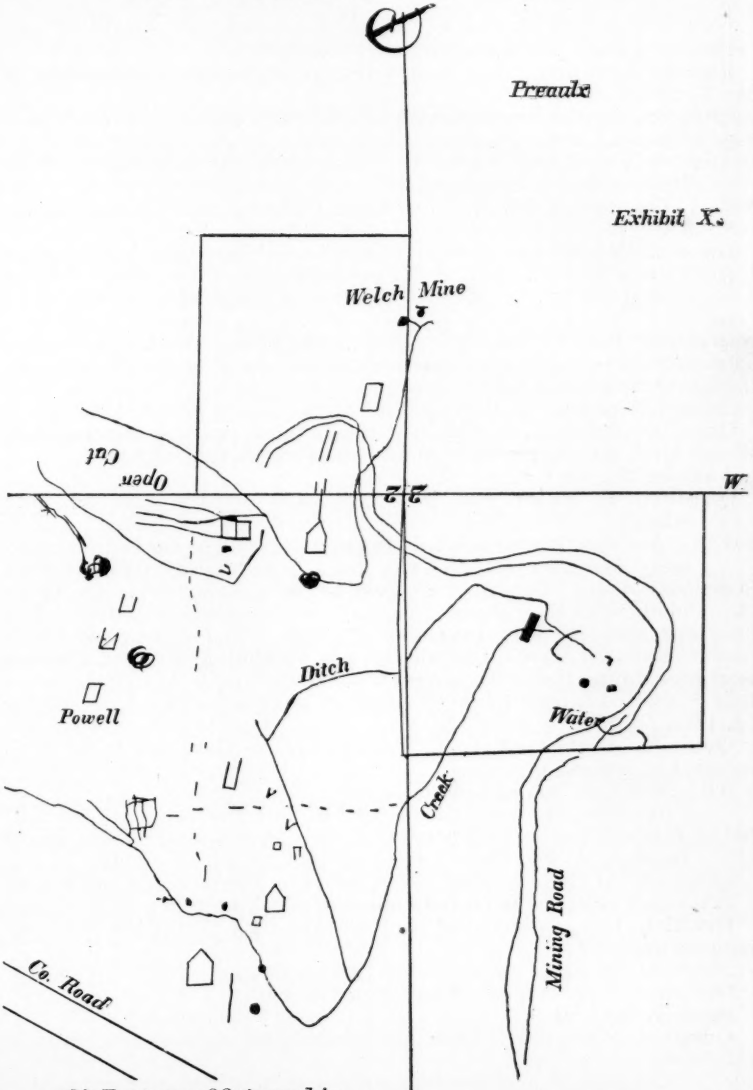
T'p No. 1 north, R. No. 1 east, M. D. M.



800 (Here follows diagram marked page 800.)

DIAGRAM.—EXHIBIT X.

WESTERN PACIFIC R. R. CO. ET AL., APP'TS,
vs.
THE UNITED STATES.
} No. 505. Page 800.



N. E. qt. sec. 22, township one north, range one east, Mt: Diablo:

N. W. qt: sec: 29, T: 1 S:, R: 1 E:

801 *Deposition of Chas. McLaughlin.*

WEDNESDAY, *January 23d*, 1878.

Present, Mr. Heath, as counsel for complainant, and Mr. Wise, as counsel for defendant.

Examination-in-chief of CHARLES MCLAUGHLIN, by Mr. WISE:

Question. State your name, age, and residence.

Answer. Age, fifty-two. Well, I vote in Santa Clara, but I live in San Francisco.

Question. Do you know the land in dispute in this case, and how long have you known it?

Answer. Yes; I have known the land in dispute in this case since 1868 (refers to memorandum).

802 Question. Do you know Joshua Marsh and William Ryder Powell?

Answer. Yes; I know Marsh; I have seen him. I don't know that I would know Powell. I think I know him when I see him. He has been pointed out to me. I don't recollect having had any talk with him.

Question. Did William Ryder Powell and Joshua Marsh go to your office in 1869, or any other time, and one or both of them, state to you that this was mineral land?

Answer. No, sir.

Question. Did they, or either of them, show you any mineral rock of any kind, purporting to have been taken from this land?

Answer. No, sir.

Question. To whom was this land sold by the railroad, and when?

803 Answer. It was first sold to me under bond by the railroad company, and then to Daniel Cox, for sixteen hundred dollars (refers to memorandum). December 19, 1868, to pay the remainder one thousand dollars after the railroad company should receive a patent. The deed was made to Cox, December 19, 1878. The railroad receive' a patent May 31st, 1880. Cox did not pay me the balance, but I took a mortgage for it—the balance, one thousand dollars with interest. After that he deeded it back to me on account of this mortgage, December 2d, 1872.

Question. At the time the title was passed to Cox, was it for agricultural or mineral purposes?

(Objected to as immaterial and irrelevant.)

804 Answer. He bought it for agricultural purposes. I enquired of him if there was any mineral upon it, supposing there might be coal; he said there was no mineral upon it whatever.

Question. At the time you took it from Cox you paid him how much?

Answer. I paid one thousand dollars and the interest.

Question. Did you have any idea at that time that there was any mineral upon it?

Answer. No, sir; I did not think there was any.

Question. Have you ever been upon this land?

Answer. Yes, sir.

Question. When did you first hear that there might be mineral upon this land?

Answer. I don't remember the time, but it was after I sold it.

805 Question. Did you go up there yourself to see that there was mineral on it?

Answer. I went up there to see if there was mineral on land adjoining the Welsh claim. Harding, I think, spoke to me about it. I looked at the land in contest at the same time.

Question. What was the result of your observation?

Answer. I did not think there was any mineral to justify their working the Welsh claim, much less the land in contest.

Question. Have you offered to parties who spoke to you about quicksilver there that they could work it?

(Same objection.)

806 Answer. Yes, sir. I have told several parties that if they wanted to work this piece or any other piece of my land there they could go to work and work it, provided they did not waste the timber and commit depredations. I would say in regard to Mr. Marsh talking to me about mineral: In 1869, Marsh—Miss Susan M. Marsh and Joshua Marsh—came to office and made a purchase of a quarter section near to the land in controversy, and at that time there was no mention made of mineral on that or any other land, or at any other time, that I remember.

Question. He gave you a note; his own note?

Answer. He gave me his note for the payment of the land, but it was in Miss Susan Marsh's name; Marsh has refused to pay that note,

807 because he alleges that it is mineral land. It is now in litigation. Susan Marsh purchased the SE. ¼ of section 19, t'p 1, N., R. 1 E.

Cross-examination by Mr. HEATH:

Question. You paid Cox the mortgage that he had already given you as part purchase price for the land, did you not?

Answer. Yes.

Question. You paid him no money?

Answer. I won't be sure as to that. I don't remrmber now whether I paid him any money back of the mortgage or not. I think, probably, I did.

Question. The six hundred dollars that he paid was paid in

808 work upon the railroad, was it not?

Answer. No, sir. I don't think he ever worked on the railroad; not to my knowledge. My impression is, that part of that six hundred dollars was given back to him with the mortgage when I repurchased.

Question. Mr. Cox purchased the land from you and received a deed from the railroad company, did he not?

Answer. Yes.

Question. Did not Mr. Powell and Mr. Marsh come to your office in San Francisco with a piece of rock which they said contained quicksilver, or cinnabar, and show it to you and inform you that it came out of the land in controversy?

Answer. No, sir.

Mr. WISE:

809 Question. You paid the railroad company a valuable consideration for this land?

(Objected to as immaterial and irrelevant.)

Answer. Yes, sir.

CHAS. McLAUGHLIN.

Subscribed and sworn to before me this 23d day of January, 1878.

JOS. F. O'BEIRNE,
Examiner.

(Endorsed:) Filed 23' January, 1878. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep. cl'k.

810 *Stipulation as to value of property in contest.*

In the circuit court of the United States for the district of California, ninth circuit.

THE UNITED STATES
vs.
THE WESTERN PACIFIC RAILROAD COMpany and Charles McLaughlin.

In this case it is stipulated and agreed that the property in contest, to wit, the northeast quarter of section twenty-nine, in township number one north, of range number one east of Mount Diablo base and meridian, is worth more than five thousand dollars, and was worth more than that sum when the suit was commenced and when the decree was filed, and has been so worth that sum and more ever since the suit was commenced. It is further stipulated and agreed that this
811 stipulation be read on appeal to show the value of the land.

PHILIP TEARE,
United States Attorney.
TULLY R. WISE,
Solicitor for Def'ts.

(Endorsed:) Filed 24 Oct'r, 1878. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep. cl'k.

812 *Order granting an appeal.*

At a stated term of the circuit court of the United States of America for the district of California, held at the court-room in the city and county of San Francisco, on Monday the 2d day of June, in the year of our Lord one thousand eight hundred and seventy-nine.

Present, the honorable Lorenzo Sawyer, circuit judge.

THE UNITED STATES OF AMERICA
vs.
THE WESTERN PACIFIC RAILROAD COMpany et al.

Now, at this day, on motion of Tully R. Wise, esq'r, solicitor on behalf of the defendants herein, it is ordered that an appeal from
813 the final decree rendered and entered in the above-entitled cause on the 20th day of June, A. D. 1878, of the February term, A. D. 1878, of this court to the Supreme Court of the United States be, and the same hereby is, allowed. It is further ordered that a certified transcript of the pleadings, depositions, evidence, stipulations, and proceedings herein be forthwith transmitted to the Supreme Court of the United States upon the appellants giving a bond in the sum of one thousand dollars.

814 *Bond on appeal.*

In the Supreme Court of the United States. In equity.

THE UNITED STATES OF AMERICA, complainant,
vs.
THE WESTERN PACIFIC RAILROAD COMPANY and CHARLES McLAUGHLIN, defendants.

Know all men by these presents the we, Tully R. Wise, of San Francisco, California, and Robert S. Thornton, of School-House Station, San Mateo County, California, are held and firmly bound unto the United States of America in the sum of one thousand dollars ($1,000.00), to be paid to the said The United States of America; to which
815 payment, well and truly to be paid, we bind ourselves, our and each of our heirs, executors, and administrators jointly and severally, firmly by these presents. Sealed with our seals; dated this nineteenth day of June, A. D. 1879.

Whereas the said defendants, The Western Pacific Railroad Company and Charles McLaughlin, have prosecuted an appeal to the Supreme Court of the United States from the final decree of the circuit court of the United States of the ninth judicial circuit in and for the district of California, made and entered in the above-entitled cause on the twentieth day of June, A. D. 1878:

Now, therefore, the condition of this obligation is such that if the above-named The Western Pacific Railroad Company and Charles McLaughlin, defendants, shall prosecute the said appeal in said
816 cause to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation to be void; otherwise to be and remain in full force and virtue.

TULLY R. WISE. [SEAL.]
ROBERT S. THORNTON. [SEAL.]

Signed, sealed, and delivered in the presence of—
JOS. F. O'BEIRNE.

UNITED STATES OF AMERICA,
District of California, ss:

Tully R. Wise and Robert S. Thornton, being severally duly sworn, each for himself deposes and says that he is a householder in said district, and is worth the sum of one thousand dollars ($1,000.00), exclusive of property exempt from execution, and over and above all his just debts and liabilities.

TULLY R. WISE.
ROBERT S. THORNTON.

817 Sworn to before me this 19th day of June, A. D. 1879.
JOS. F. O'BEIRNE,
Commissioner U. S. Circuit Court, District of California.

(Endorsed:) The form of the within bond and the sureties thereinnamed are hereby approved.
June 19, 1879.
(Signed) LORENZO SAWYER,
Circuit Judge, Ninth Circuit.

Filed June 19, 1879. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep'y cl'k.

818 I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States, of the ninth judicial circuit in and for the district of California, do hereby certify that the foregoing eight hundred and seventeen written pages, numbered from 1 to 817 inclusive, are a full, true and correct copy of the record and of all proceedings in the therein-entitled cause, and that the same together constitute the transcript on appeal to the Supreme Court of the United States therein.

Witness my hand and seal of said circuit court this 20th day of September, A. D. 1879.

[SEAL.]

L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE, *Deputy Clerk*.

(Indorsement on cover:) No. 505. The Western Pacific Railroad Company and Charles McLaughlin, appellants, vs. The United States. California C. C. U. S. Filed 1st May, 1880.

108-5-10

Supreme Court of the United States.

OCTOBER TERM, 1882.

No. 219.

THE WESTERN PACIFIC RAILROAD COMPANY
AND CHARLES McLAUGHLIN

vs.

THE UNITED STATES.

BRIEF

OF HENRY BEARD,

Attorney for Appellants.

JUDD & DETWEILER, Printers.

Supreme Court of the United States.

OCTOBER TERM, 1882.

No. 219.

THE WESTERN PACIFIC RAILROAD COMPANY AND CHARLES McLAUGHLIN

vs.

THE UNITED STATES.

STATEMENT OF THE CASE.

This cause comes into this Court by appeal of the defendants below, from the decree rendered by the circuit court of the United States for the district of California, on the 20th day of June, 1878, in equity cause No. 1733, against them and in favor of the United States. (Decree on page 8 of printed Record. Appeal allowed, 196, and filed in this Court May 1, 1880.)

The bill of complaint was filed February 21, 1877, by the United States district attorney. *No direction or authority from the United States Attorney General* for the institution of the suit is set out in the pleadings.

I quote the most trenchant paragraphs in the complaint, as follows, (pp. 2, 3, 4):

To the honorable the judge of the circuit court of the United States for the ninth circuit, district of California.

John M. Coghlan, United States attorney in the district of California, on behalf of the United States of America,

brings this his bill of complaint against the Western Pacific Railroad Company, an incorporation organized within and under the laws of the State of California, and Charles McLaughlin, a resident of this district; therefore your orator complains, and says:

That by the several acts of Congress of the United States, approved July 1st, 1862, and amended July 2d, 1864, and March 3d, 1865, and by the joint resolution of 2d March, 1866, certain lands to be thereafter selected were to be granted to the said Western Pacific Railroad Company, provided said incorporation should complete a certain railroad and telegraph line in said several acts mentioned and described, and within the time and in the manner therein specified and set out, excluding and excepting from such grant all mineral lands embraced within the boundaries of said grant. That afterwards, to wit, on the 1st day of February, A. D. 1870, the commissioners, appointed for such purpose, filed with the Secretary of the Interior, at his office in the city of Washington, in the District of Columbia, United States of America, an official statement, representing therein that the said line of railroad and telegraph had been completed and equipped in the manner provided in the said several acts of Congress relative to the Western Pacific Railroad of California. That the said Western Pacific Railroad Company by its agent, Charles McLaughlin, on the 24th day of March, A. D. 1870, made and filed with the register and receiver of public lands, subject to sale at San Francisco, California, its original selection of lands within the proper circuits, (districts,) as provided in the said several acts of Congress. That among the lands so selected by the said Western Pacific Railroad Company was embraced the northeast quarter of section twenty-nine, in township one north, of range one east of Mount Diablo meridian, in the county of Contra Costa, in the State of California, containing one hundred and sixty acres of land. That thereafter said selection of lands were received at said land office, and was allowed by the register and receiver of the said land district of San Francisco, and return of said selections was there duly made by the said register and receiver to the General Land Office, at Washington, District of Columbia. That thereafter, to wit, on or about the 31st day of May, A. D. 1870, *United States letters patent in due form of law were issued to the said Western Pacific Railroad Company*, for the

said northeast quarter of section twenty-nine, in township No. one north, of range one east Mount Diablo meridian, and delivered to the said Western Pacific Railroad Company and came into the possession of the said Western Pacific Railroad Company.

And your orator further shows that the said parcel of land herein described and embraced in said letters patent granted, and hereinbefore described, was at the time the said Western Pacific Railroad Company selected the same, and applied for a patent for the same, and prior thereto, and ever since have been and now are mineral lands of the United States, containing *valuable quicksilver and cinnabar* deposits. That for more than ten years last past the said lands have been settled upon and occupied by persons engaged in mining in and upon the said land. That the mineral character of said lands has been well known during all the time it has been settled upon and occupied.

And your orator further shows that the map of the public survey of said lands was filed by the surveyor-general of the United States, in the office of the register and receiver for the district of San Francisco, on the 17th day of October, A. D. 1873, and that on said official map said lands are located as mineral lands.

Your orator further shows that by the terms of said letters patent all mineral lands are specially excepted and excluded from the operations of said letters patent.

Your orator further shows that the allowance of said selection by the said register and receiver and the return thereof to the General Land Office at Washington, District of Columbia, and the issue of said United States letters patent, and all the acts pertaining thereto and connected therewith, were done and performed unadvisedly and through inadvertence and mistake. * * *

And your orator further shows that the said Charles McLaughlin, at the time the said United States letters patent was transferred to him as aforesaid, then and there well knew and had notice that the land described in the said patent hereinbefore described was mineral lands of the United States occupied as aforesaid; that they were wholly unfit for cultivation and agricultural purposes, and were not and never had been subject to be granted under the provisions of the several acts of Congress, and that the said letters

patent had been unlawfully obtained by the Western Pacific Railroad Company, as aforesaid.

And your orator charges that by reason of the premises said United States letters patent, are illegal, fraudulent, and void; that they have and cast a cloud upon the title of the United States to said lands, and embarrass and obstruct the free and clear alienation of the same to bona fide purchasers.

And your orator prays that the same be adjudged and decreed to be null and void and wholly vacated, annulled, and set aside and cancelled and held for naught, and for such other and further relief as to your honor shall seem meet in the premises. * * *

To this bill McLaughlin filed his answer. He admitted the issuing of the patent as stated, and that he is now the owner of the land described in the bill, but denied that the said tract was ever mineral land. He also denied that the said tract was know as mineral land; denied that it had been occupied as mineral land, as alleged in the bill; denied the validity of the pretended surveys of said tract in 1873; denied that by the terms of the patent all mineral lands are exempted from the effect of the patent; and denied that the selection of the land "was allowed by the register and receiver" "through inadvertence or mistake;" and denied that "the issuing of the patent, or any of the acts pertaining thereto, was done or performed unadvisedly or through inadvertence or mistake."

He denied that he knew or had notice when he purchased the said quarter section, that the land was mineral land, and denied that the patent had been unlawfully obtained by the railroad company, and denied that the United States has any title whatever to the tract described, (p. 5.)

The United States filed replication to the answer, (p. 7.)

In the bill of complaint (p. 3) it is alleged that the quarter section in contest at the date of selection, and before and since, have been and are mineral lands, containing "*valuable quicksilver* and cinnabar deposits."

The replication (p. 7) also alleges that the "said land

contained *valuable deposits of quicksilver* rock in place, as well as cinnabar in surface earth."

The complaint alleges that the official map of the survey of the tract locates this as mineral land, and is dated in October, 1873. McLaughlin having answered that the tract had been surveyed long prior to the patent, and that the survey of 1873 was made long after the official survey, (record, p. 5,) the replication (p. 7) reiterates the allegation that there was no legal survey of said land until about the year 1873.

There are other allegations and denials. I have selected those that appear to present the controversy squarely as it stands to-day.

The court below entered the following decree, (p. 8):

At a stated term of the circuit court of the United States of America for the district of California, held at the court-room, in the city of San Franciso, on Thursday, the twentieth day of June, in the year of our Lord one thousand eight hundred and seventy-eight.

Present, the honorable Lorenzo Sawyer, circuit judge.

THE UNITED STATES *vs.* THE WESTERN PACIFIC RAILROAD COMPANY, and Charles McLaughlin.	In equity. No. 1733.

This cause came on to be heard at this term, and was argued by counsel, and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed as follows, viz: That the land described in the bill of complaint filed herein, and being part of the land mentioned in the letters patent issued on or about the 31st day of May, A. D. 1870, by the United States to the defendant, the said Western Pacific Railroad Company, the title to which land was afterwards, by several mesne conveyances, vested in the said defendant, Charles McLaughlin, being that certain tract of land described as follows, to wit: The northeast quarter of section twenty-nine, in township number one, north of range number one east, of Mount Diablo base and meri-

dian, in the county of Contra Costa, California, containing one hundred and sixty acres of land, were mineral lands within the meaning of the acts of Congress referred to in the bill of complaint, and not subject to entry by said Western Pacific Railroad Company, and said letters patent, which are fully described in the bill herein now on file in this cause, were issued by mistake and without authority of law as to the lands in the bill of complaint and in this decree described, and that said letters patent as to said land herein mentioned, and only as to said land be adjudged and decreed to be null and void, and that the same be to that extent set aside, cancelled, and held for naught, and that the grantee and all others deriving title to said land hereinbefore described under said letters patent take nothing by reason thereof.

And it is further ordered, adjudged, and decreed that the defendants pay to the complainant, the United States, his costs in this suit as taxed, amounting to the sum of three hundred and twenty-three dollars and seventy cents.

(Signed) LORENZO SAWYER,
Circuit Judge.

The very distinguished judge who rendered the decree has filed no opinion in the case.

It was provided by stipulation that the patent issued by the United States to the defendant railroad company, 31st May, 1870, might be filed in evidence, Record, p. 11, also p. 179, but we do not find any copy thereof in the record.

It is admitted that a certificate in the following form is issued by the register and receiver upon the admission of selections of railroad lands, (p. 178,) by the Western Pacific Railroad Company.

UNITED STATES LAND OFFICE, 18—.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the under selection by , the duly authorized agent, and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is

allowed and approved, and that the whole of said lands are *surveyed public lands of the United States*, and within the limit of miles on each side; and that the same are not, nor is *any part thereof, returned and denominated as mineral land or lands*, nor claimed as swamp lands, nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to as allowed by the act of Congress, approved July 1st, 1864, and contemplated by the circular of instructions, dated January 24th, 1867, addressed by the Commissioner of the General Land Office to registers and receivers of the United States land offices; and that the said company have paid to the undersigned, the receiver, the full sum of , in full payment and discharge of said fees.

Register.
Receiver.

As the letters-patent are stated in the bill to have been issued "in due form" of law, it is thereby conceded that the customary forms were observed by the local officers, the General Land Office, and the Secretary of the Interior, in issuing said patent, which, as stated in the petition, is dated 31 May, 1870.

The circular of the General Land Office under which the tract now in controversy was selected is believed to have been that of Jan. 24th, 1867.

(2d Lester's Land Laws, Regulations and Decisions, p. 362.)

I call attention to the 8th and 9th paragraphs of these instructions, as follows, pp. 363, 364:

"8th. Herewith is a form of title-page to be prefixed to the Lists of Selection.

"Let me here call your special attention to the necessity of *great care* in the examination and testing of these lists, so that all conflicts may be avoided and improper selections be excluded, and that the verified schedules may be absolutely accurate, thus avoiding embarrassment and delay to all concerned.

"9th. Pacific Railroad act, July 2, 1864.—It is provided in

section 4 that the word 'mineral,' when it occurs in that act, shall not be held to include iron and coal. Therefore, iron and coal lands are subject to selection by the Pacific railroads; but all other minerals are expressly excluded from the grant, and must necessarily be so from all selections you may certify to this office. When the verified lists are received at the General Land Office, prepared and certified as above required, such definitive action as the law requires will be here taken, with a view to invest the grantee with a complete title." * * *

It is conceded by the appellants that "all mineral lands" are excepted from this operation of the grant under which the patent issued to the defendant railroad company, but the term "mineral lands" must "not be construed to include coal and iron land." (Sec. 3, act July 1, 1862, 12 Stat., 492; and Sec. 4, act July 2, 1864, 13 Stat., 358.) But they claim that the proper officers of the United States had made the intelligent decision that the said land was subject to the said grant, and that it was not mineral land, before and at the time that the said patent was issued.

The testimony was taken at San Francisco before an examiner in chancery. Seventeen witnesses were examined on behalf of the United States, (Record, p. 12,) beginning June 27, 1877. Two of the witnesses for the Government were recalled; and seven additional witnesses sworn for the defence, p. 115. In the testimony much that is relevant is repetition, and intermingled with much unimportant and some difficult to interpret.

The land is worth $ 6000. Record p. 196

ASSIGNMENT OF ERRORS IN THE DECREE OF THE U. S. CIRCUIT COURT.

1. The appellant, McLaughlin, excepts to the finding and judgment of the said circuit court—because it does not appear in the pleadings or decree that the United States, by its Attorney General, authorized the filing of the bill in this cause.

2. The appellant, McLaughlin, excepts to the finding of the court that the 160 acres of land in the bill described were "mineral lands" within the meaning of the acts of Congress mentioned in said complaint, and claims that the evidence before the court was and is insufficient to sustain the conclusion.

3. The said appellant excepts to the finding that the patent to the defendant railroad company therefor was issued by mistake and without authority of law.

In support of the first exception above, I respectfully refer to the case of the United States *vs.* Throckmorton, 98 U. S. Repts., p. 61, from which the subjoined quotation is made, remarking here that there is not found any such important principle or valuable property at stake in this case, as I would suppose would be requisite to induce the United States to have recourse to the courts to set aside its own conveyance.

On page 70 of 98 U. S. Repts., I find the following:

"We are of opinion that, unless by virtue of an act of Congress, no one but the Attorney-General, or some one authorized to use his name, can bring a suit to set aside a patent issued by the United States, or a judgment rendered in its courts on which such a patent is founded.

"That is the case before us, and we see nothing in the bill to indicate to the court that it ever received the sanction of the Attorney-General, or was brought by his direction. The allegation already cited implies that Mr. Van Dyke, the district attorney, is the complainant; but if, construing it liberally, we hold that the United States is the complainant, the statement is clear that the bill was brought by the district attorney, and not by the Attorney-General. Leaving out of consideration all mere questions of form, there arises no presumption from the act of Congress which gives the Department of Justice a general supervision over the district attorneys, that this suit was brought by his direction; for they, in the strict line of their duty, bring innumerable suits, indictments, and prosecutions, in which

the United States is plaintiff, without consulting him. In the class of cases to which this belongs, however, the practice of the English and the American courts has been to require the name of the Attorney-General as indorsing the suit before it will be entertained. The reason of this is obvious; namely, that in so important a matter as impeaching the grants of the government under its seal, its highest law officer should be consulted, and should give the support of his name and authority to the suit. He should, also, have control of it in every stage, so that if at any time during its progress he should become convinced that the proceeding is not well founded, or is oppressive, he may dismiss the bill."

Remarks relative to statutory provisions and definitions of the "mineral lands."

The case at bar appears to the undersigned to be one of much interest and importance. It involves the question "What are "mineral lands"—what is the meaning and interpretation of those two words, "mineral lands," as found in the United States land laws?

The lands in controversy are alleged by the pleader in the petition to be "mineral lands," because "containing valuable quicksilver and cinnabar deposits," Record, p. 3; and in the replication he says, "said land contained valuable deposit of quicksilver in rock in place, as well as cinnabar in surface earth."

We accept this as correctly defining mineral lands. The deposits of the precious metal must be *valuable*, and here there is but one standard of value practicable. Mineral lands must contain ores sufficiently rich in quality, and affluent in quantity, to yield a moderate return to labor and capital employed in working them. If they will not do this they are not *valuable* as mineral lands.

The patent having issued May 31, 1870, the question and case seem specially referable to that date; but no objection has been made to the consideration of the testimony of wit-

nesses whose examinations of the land and acquaintance with it have been subsequent to that date.

By the act of Congress of March 3, 1853, regulating the survey of public lands in California, section 3, (10 Stat., 245,) it is—

"Provided that none other than township lines shall be surveyed when the lands are *mineral* or are deemed unfit for cultivation, and no allowance shall be made for such lines as are not actually run and marked in the field and were actually necessary to be run."

This was the law of the locality when the first subdivisional survey was made in the township, and when the patent issued under which McLaughlin holds title, and it remained in force until July 9, 1870, when repealed by the act of that date, (16 Stat., 217, sec. 16,) as follows:

SEC. 16. *And be it further enacted*, That so much of the act of March third, eighteen hundred and fifty-three, entitled "An act to provide for the survey of the public lands in California, the granting of preëmption rights, and for other purposes," as provides that none other than township lines shall be surveyed where the lands are mineral, is hereby repealed. And the public surveys are hereby extended over all such lands: *Provided*, That all subdividing of surveyed lands into lots less than one hundred and sixty acres may be done by county and local surveyors at the expense of the claimants: *And provided further*, That nothing herein contained shall require the survey of waste or useless lands.

Therefore, when said patent issued, it was unlawful to survey the quarter-section in controversy if it was "mineral land."

"All mineral lands" were excepted "from the operation" of the grants to the railroad company in 1862 and 1864. They were likewise excepted from the operation of the various grants to the State of California in the act March 3, 1853, and from preëmption rights, as well as withdrawn

from subdivisional survey by the surveying officers. (10 Stat., 244.)

In 1866 Congress (14 Stat., 251,) enacted what this Court has called "a complete system for the sale and other regulation of its mineral lands."

Mining Co. *vs.* Consolidated Mining Co., 102 U. S. Rep., at p. 174.

Sections one and two of the act are as follows:

Be it enacted, &c., That the mineral lands of the public domain, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and occupation by all citizens of the United States, and those who have declared their intention to become citizens, subject to such regulations as may be prescribed by law, and subject also to the local customs or rules of miners in the several mining districts, so far as the same may not be in conflict with the laws of the United States.

SEC. 2. *And be it further enacted*, That whenever any person, or association of persons, claim a vien or lode of quartz, or other rock in place, bearing gold, silver, cinnabar, or copper, having previously occupied and improved the same according to the local customs or rules of miners in the district where the same is situated, and having expended in actual labor and improvements thereon an amount of not less than one thousand dollars, and in regard to whose possession there is no controversy or opposing claim, it shall and may be lawful for said claimant, or association of claimants, to file in the local land office a diagram of the same, so extended laterally or otherwise as to conform to the local laws, customs, and rules of miners, and to enter such tract and receive a patent therefor, granting such mine, together with the right to follow such vein or lode with its dips, angles, and variations to any depth, although it may enter the land adjoining, which land adjoining shall be sold subject to this condition.

The inquiry is suggested whether by that law the line of demarkation between the mineral and non-mineral lands was fixed for the time being. If yea, then the mineral

lands that could be sold under that act were lands containing "a vein or lode of quartz, or other rock in place, bearing gold, silver, cinnabar, or copper," * * * "improved according to the local customs or rules of miners," &c. Here is something explicit. It describes veins or lodes of ores capable of improvement and use as mines. If this law designated the "mineral lands," so long as it remained in force, and unchanged, then I claim that the evidence in the case shows that the land in contest was not mineral land, because it shows affirmatively that there is not any vein or lode of the precious metals to be found upon it.

But if another view be taken; if this act of 1866 *did not define the mineral lands* while it was in force unaltered, but only provided for the sale of a certain class of them, then we are carried along to the further legislation of July 9, 1870, sec. 12, (16 Stat., 217,) providing for the sale of "Placer claims," as mineral lands, and to the act of May 10, 1872, (17 Stat., p. 91,) which does contain a definition, and is as follows:

Be it enacted, &c., That all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners, in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.

This section is referred to as the foundation of paragraph 2318 of the Revised Statutes, as follows:

"Sec. 2318. In all cases lands valuable for minerals shall be reserved from sale, except as otherwise directed by law."

Both these enactments were prior to the institution of this suit, and such being the case, it is clear that the United

States cannot recover in this case without affirmative proof that the land in contest is "*valuable for minerals.*"

Further Propositions for Argument.

2d. I propose to show from the record, that the quarter section in controversy was in the regular and proper administration of the land laws by the executive officers, ascertained to be non-mineral land, as such had been regularly surveyed and returned, and was patented on the 31st of May, 1870, to the said railroad company, and that this quarter section of land was never surveyed and returned as mineral land, at least that the evidence in the case shows but one survey, and by that survey there was a return of the land without any designation of minerals.

3d. I claim that the burden of proof is upon the appellee, complainant below, and that the evidence submitted by the complainant, even without considering that of the defendant, fails to show the land to be valuable for cinnabar, as alleged in the complaint.

The record discloses an attempt by the complainant to discredit the original survey of the northeast quarter of section twenty-nine, township one north, range one east, and to exhibit a *subsequent survey of adjoining land as the authentic survey of this land.*

A copy of a letter of the Commissioner of the Land Office, dated March 14, 1874, was offered in evidence by the United States *and objected to*, (Record, 113, margin 470,) annexed to the testimony, and marked Exhibit D. (Record, p. 191.)

This was introduced for the purpose of showing that the NE. ¼ of Sec. 29 had not been surveyed prior to the issuing of the patent, and that the true plat of the township had been filed with the register, October 17, 1873. The testimony of witness NcNee, (p. 113, margin 472,) tended to show

that the last map filed, October 17, '73, had returned this quarter section as mineral land. The same witness recalled (Record, 177, margin 744, 745, 746, 747, and Record 178, margin 748 and 749) gives an explanation in detail, which corresponds with the true state of facts. He says the plat of survey of the township was filed with the register July 19, 1867, that that map showed the N. ½ of the NW. ¼ of Sec. 29, and thereon the figures "80," also the NE. ¼ of the section and the figures "160," which figures denote the area of the said tracts, and there was "*no writing upon it*," that is, on the NE. ¼, that there was no mark or indication that the quarter was mineral land; but upon the N. ½ of Sec. 30 there was the word "cinnabar."

The United States also introduced the field notes of the subdivisional surveys made by John C. Partridge, January 14 and 15, 1873, which the attorney for the complainant called "putting in," "in regular form, the field notes of the last survey," and which field notes are on pp. 187, 188, 189, of the printed record.

All this evidence is inadmissible for the purpose of impeaching the "letters patent, issued in due form of law," on the 31st May, 1870, because with the issuing of that patent, and whilst it remained uncanceled by judicial decree, the executive authority over the land had terminated.

Moore *vs.* Robbins, 96 U. S., 530.

It has also been decided by this court that a second survey of land, after the United has parted with the title, is inoperative to affect the title conveyed by the patent. The Government was bound by the original survey. (Lindsey *vs.* Hawes, 2 Black, 560; also, R. R. Co. *vs.* Shurmier, 7 Wallace, 273, at middle of p. 289.)

The pleadings allege the regular issuing of the patent in due form of law; and the proceedings under the railroad grant, and prior to the patent, embrace a recital that the

lands are duly surveyed, and not returned or denominated as mineral lands. (Record, 178, margin 751.)

Perhaps it is unnecessary, but I have very carefully sifted and compared what appears in the testimony concerning the survey of the tract in controversy, and shown, as I believe, in the latter portion of this brief, that the northeast quarter of section 29, township 1 north, range 1 east, was regularly surveyed and returned as non-mineral; and that the survey by Patridge in 1873, and his field-notes and return, do not embrace or relate to the northeast quarter of section 29, but only to those parts of that section, and to sections 30, 31, and 32, that had not been surveyed in 1867, because regarded as "unfit for cultivation," and having "indications of cinnabar," and consequently not liable to be surveyed in 1867.

III.

3d. Coming now to my 3d proposition, I remark that the patent for the northeast quarter of section 29, having issued in "due form of law," after the regular survey and due examination of the tract determining that it was of the description of land granted by Congress to the railroad company, the affirmative propositions of the bill in this cause must be satisfactorily supported by the evidence, otherwise the bill must be dismissed.

The bill describes the land as "containing *valuable* quicksilver and cinnabar deposits." The replication says, "said land contained *valuable* deposit of quicksilver in rock in place, as well as cinnabar in surface earth."

It is not every trifling deposit of ore that will make a tract of land "mineral land."

This remark is sustained by a recent decision of the supreme court of Nevada, at the October term, 1880, made since the decree in case at bar was entered in the United States circuit court for the 9th circuit.

(15th Nevada State Reports, 405, Merrill *vs.* Dixon *et al.*)

The action was brought to recover 398 cords of wood that had been cut in 1877 from the west half of section 9, township 21 north, range 19 east, for the Poe Mining Company, and sold to plaintiff by the sheriff as the property of said mining company.

The defendants claimed the wood, as owners of the land, under a conveyance from the Central Pacific Railroad Company, and it was conceded that the land belonged to said railroad company at the time the wood was cut, unless it was mineral land, and as such excepted from the railroad grant of 1862 and 1864.

The map of the Government surveys was offered in evidence to show that the land was mineral land. Objected to, and the objection sustained. I quote the language of the court:

"For the purposes of this case, we shall consider that all mineral lands which were intended by Congress to be excluded and excepted from the operation of the grant to the railroad company, were excluded and excepted by the patent conveying the lands to the said company upon which this wood was cut. And, although we are strongly impressed with the idea that the plaintiff's relation to the title is not such as to allow him to question the validity and efficacy of the patent (Dall. v. Meader, 16 Cal. 324), still, it being unnecessary, that subject will not be considered.

"Counsel for plaintiff says in his brief, that the reason why the testimony of Barker was offered, was 'to show that the land on which the wood was cut had been returned and denominated mineral lands.' But suppose it was so returned and denominated?

"That fact would not tend to show that the land was such mineral land as was excepted and excluded by the grant. The text of the act of 1864, as it appears in 13 Statutes at Large, at page 358, is as follows: 'And any lands granted by this act, or the act to which this is an amendment, shall not defeat or impair any pre-emption, homestead, swamp land, or other lawful claim, nor include any Government reservation, or mineral lands, or the improvements of any *bona fide* settler, or (on) any lands returned and denominated as mineral lands. * * * The word "or," last used in the sentence quoted, should read "on." (See 2 Lester's Land Laws, 123.) So the statute should read as follows:

"'And any lands granted by this act * * * shall not * * * include * * * any mineral lands, or the improvements of any *bona fide* settler on any lands returned and denominated as mineral lands.'

"The witness, Barker, did not pretend to know anything about the lands embraced in section 9. He did not know whether they were at all valuable for mining purposes. He simply knew they were returned and denominated upon the map as 'copper, gold, and silver-bearing quartz.'

"After the company's patent from the Government was admitted in evi-

dence, the burden of proof was upon plaintiff to show, admitting he was in situation to demand the right to do so, that the tract described therein was, in fact, such mineral land, that it was excepted from the operation of the grant and by the terms of the patent. Neither the map nor the testimony of Barker, tend to show that fact. It can only be claimed that the map showed, *prima facie*, that there was, upon the section, 'copper, gold, and silver-bearing quartz'; but it did not tend to show whether it was there in quantity or quality sufficient to make the land valuable for mining purposes, and if that was not shown, proof of the *prima facie* fact just mentioned did not tend to show such mineral lands as are excluded from the grant.

"In excluding mineral lands, Congress only intended to exclude lands valuable for mining purposes. It is only valuable mineral lands and deposits that are reserved from sale, except as provided by law, in respect to mineral lands. (See U. S. Rev. Stats., secs. 2318, 2319.)"

In Alford *vs.* Barnum, 45 Cal., 484, the court said:

"But it is contended by the defendant that the land in controversy was 'mineral land,' and so within the reservation of the act of Congress of July 1, 1862, and July 2, 1864, by which public lands were granted to the railroad company, and within the exceptions and reservations of the patent which, in this respect, follows the terms of the grant. * * *

"The mere fact that portions of the land contained particles of gold, or veins of gold-bearing quartz rock, would not necessarily impress it with the character of mineral land within the meaning of the acts referred to. It must at least be shown that the land contains metals in quantities sufficient to render it available for mining purposes. Any narrower construction would operate to reserve from the uses of agriculture large tracts of land which are practically useless for any other purpose, and we cannot think this was the intention of Congress.

* * * * * * * * *

"It is well known that it is the constant practice of the Land Department to allow lands returned, denominated, and claimed as mineral lands to be purchased as agricultural lands upon satisfactory proof that they are not valuable for mining purposes.

"The judgment and order appealed from are affirmed."

On examination we find that the proof fails to establish the allegation that the land was and is mineral land.

It shows that there is no vein, lode, or ledge of cinnabar on this quarter section.

Joshua Marsh, witness for complainant, on cross-examination, questions 55 and 56, Record, p. 16, testifies:

Question 55. Has there been any ledge found on this land?

Answer. No, sir; I think there hasn't been any ledge found on the land. The richest they ever have got is in the dirt. Some is in the rock part of it.

Question 56. Has there been any cinnabar ledge found anywhere there?

Answer. They say they have got a ledge at the Welch mine, but I don't know of any.

J. H. Welch, from whom the Welch mine on the SE. ¼ of sec. 29 was named, Record, p. 37, says:

Question 105. Did you ever trace a quicksilver ledge, or see one?

Answer. Yes, sir.

Question 106. Where?

Answer. Up there.

Question 107. A quicksilver ledge up there?

Answer. What we took to be a ledge; yes, sir.

Question 108. Can you tell what a ledge is?

Answer. A ledge is rock in place, I suppose; rock that is together, not thrown about; that is what I understand by a ledge.

Question 109. On this land in question here have you found any quicksilver ledge?

Answer. No, sir.

Mr. WISE, p. 47:

Question 266. When, Mr. Welch, did you ever find any quicksilver in any place where you had got entirely clear of the dirt, and it was in the rock? Did you ever?

Answer. Oh, yes, sir.

Question 267. On this land?

Answer. Not on that land; no, sir.

Question 268. Whenever you found quicksilver on this land it was rock, and earth, and quicksilver, and other things mixed?

Answer. Yes, sir.

J. L. Shannon, for the United States, Record, 71:

Question 128. What you saw and took to be cinnabar, was it in dirt, or clay, or rock, or was it in all three, or how was it?

Answer. All three, sir.

Question 129. Did you see any ledge?

Answer. I didn't see any ledge of quicksilver rock—what I would term a ledge.

Isaac T. Sherman, p. 77, in answer to question 57, said he did not see anywhere on the 160 acres anything that looked like a real ledge.

C. A. Bramlet, for the United States, was uncertain as to the exact place at which he found some ore, but replied as follows, p. 109:

Question 89. What did you take it out of?
Answer. I took it out of the boulder.
Question 90. You saw nothing but a boulder?
Answer. I saw several.
Question 91. You did not see any ledge?
Answer. No, I did not.

Jacob Bendixen, for defendant, p. 118, testified:

Question 37. Is there any ledge on this land in controversy?
Answer. Not to my knowledge, sir.
Question 38. Have you made a thorough examination of the quarter section?
Answer. I think I have, sir.
Question 39. Did you ever find any trace of a ledge on that quarter section?
Answer. I did not, sir.

Same witness, on cross-examination, p. 132:

Question 270. You say there is no ledge, to your knowledge, upon that ground?
Answer. There ain't, sir.
Question 271. The Welch Consolidated Quicksilver ledge ends how near that ground where you have prospected it?
Answer. I could not tell; we never was deep enough by a good many hundred feet to tell.
Question 272. How far from this piece of ground did you strike that ledge?
Answer. Well, I suppose about—well, in some places the cropping all came to the line within a hundred yards, and probably in other places it wouldn't come near so close.
Question 273. What is the main direction of that ledge, north and south?

Answer. It runs east and west—northwest and southeast about, is the nearest you can get to it.

Wm. Mulligan, Record 143, margin 596, says he saw no re[de]fined ledge—would not call the Welch Consolidated a ledge.

T. J. Crandell, for defendant, p. 148, testified:

Question 11. With regard to the ledge that they have got on the Welch mine—have you ever worked on that ledge?

Answer. I have—very little, though on the ledge. I worked outside mostly when I worked there at the mine.

Question 12. How far is that ledge from the Powell claim?

Answer. Well, the line runs—how far is the ledge?

Question 13. Yes, sir.

Answer. I don't know exactly. It must be four or five hundred feet to the ledge—that is, what they call the ledge.

Question 14. Is Powell's down hill or up hill from this ledge?

Answer. Powell's is down hill from this ledge for a ways, and then it is up hill. It is down hill until you pass the reduction works.

Question 15. Do you know where the gulch is?

Answer. Yes, sir.

Question 16. Is that gulch down hill from the ledge?

Answer. That gulch is down hill from the ledge, sir.

Question 17. Can rocks and boulders be carried from that hill down to that gulch by rains and floods?

Answer. Very easily, sir.

Question 18. Are there a number of boulders that have been carried by rains and storms down the hill?

Answer. Yes, sir.

Question 19. Have you examined them with reference to that subject at different times?

Answer. I have; I have never seen them rolling down, but I have seen that they were boulders, and that they must have come down that way.

Mr. Richard Taylor, a comparative stranger to the locality, is, I believe, the only witness who says that he saw

indications of a "vein," and that ore which he found on the surface indicated the existence of a vein. (Record, pp. 50 and 51, margin, 201–202.) But he appears to be speaking generally of the region about the Welch mine. He says that the surface ore would yield two or three per cent. of cinnabar, and that ore yielding three per cent. will, in his opinion, "pay" to reduce it, (p. 51.)

This witness said he had been sent up there to examine the Welch mine and several other places, by Mr. Parrott, Mr. Tom Bell, and others. But Mr. Bell was called by the defendant, and denied knowing Taylor and denied having employed him to examine quicksilver mines. (Record, 176.)

The proof, therefore, shows that there is no known vein, lode or ledge of cinnabar on this quarter section, and that there are no indications of one.

But there is some cinnabar ore there; and the question arises: Is this good mining ground?

Thomas Priaulx, for complainant, Record, p. 23, testifies:

Question 28. Did you ever see on this land any ledge?

Answer. No, sir; not that I know of.

Question 29. The quicksilver that you found, was it in the soil or in the rocks?

Answer. In the rocks, and some in the soil, too.

* * * * *

Question 32. What you say you saw that you called quicksilver rock, didn't it look as if it had been broken off from somewhere? I am, of course, only asking for your opinion; you cannot tell whether it was or was not. Did it appear to have been, or not?

Answer. I should judge it would been.

Question 33. How much of that rock did you see on this land?

Answer. I should judge about three or four ton.

Question 34. Where, on this land?

Answer. Yes, sir.

Jonathan Donner, for complainant, said he knew the quarter section in controversy. (Record, p. 28.)

Question 10. Does the land contain mineral?
Answer. Yes, sir.
Question 11. What mineral?
Answer. Cinnabar.
Question 12. Have you worked upon the land?
Answer. No, sir.
Question 13. Upon what portion of the land have you seen that cinnabar?
Answer. Well, I seen it pretty much all over it in different places, particularly on the southern portion of it.
Question 14. State whether you have seen and examined the rock in an open cut in that place?
Answer. Yes, sir; I have.
Question 15. Describe that open cut and what it contains?
Answer. Well, it contains rock and dirt.
Question 16. Well, as to cinnabar?
Answer. The dirt contains cinnabar. It has been taken out of that, and the rock contains cinnabar that comes from this open cut.

At pp. 29 and 30, margin 113, 114, this witness says he has prospected over the surface of the quarter section in question, and found cinnabar. Took out over one pound. He found it in "loose rocks and dirt." Prospected with a pan. (Margin 117.)

J. H. Welch, on cross-examination this (p. 40:)

Question 148. How do you find the mineral?
Answer. Well, in the rocks; some big ones and some little ones, and some dirt. Where you do not find rock, if the ground looks favorable, you take a pan and pan it.
Question 149. You mean to say that almost all over this quarter section you can find some traces of metal?
Answer. Yes, sir.
Question 150. Did you ever find any metal in any quantities on this quarter section that would pay for working?
Answer. Yes, sir, some. I think it would pay. I don't know as it would.
Question 154. All over this quarter section, and all around

the neigborhood there, there are a great many little prospecting holes dug, are there not?

Answer. Yes; a good many.

Question 155. Most of them have been abandoned, have they not?

Answer. Yes, sir; a great many of them have been abandoned.

Question 156. When did they first commence prospecting for metals in that section of the country?

Answer. I don't know exactly; it was a good while ago, though.

Question 157. When, as near as you can remember?

Answer. It must have been before 1860, anyhow, or about 1860, I should think.

Question. And they have been prospecting there ever since; digging little holes and leaving them?

Answer. Little holes and big holes.

John Grummett was called by complainant, but on cross-examination said he first examined the lands about two years ago, (record, p. 85:)

Question 60. Did you discover anywhere upon this land any mineral ledge?

Answer. No, sir.

Question 61. All you saw was these little pieces of rock and this earth and clay that you think contained quicksilver?

Answer. The large rock was in this cut; the small rock was in different places over the land.

John Donner, Sr., (record, 90,) a few days before he testified had taken some ore that he had obtained from the land by panning to Mr. Strong to be assayed. (Mr. Strong (p. 96) testified that the ore presented by Mr. Donner had assayed 6.8 per cent. of quicksilver.

C. A. Bramlet, (p. 105, margin 437,) selected a piece a little larger than a hen's egg, and obtained a lady's thimble full of quicksilver.

For defendant, *Mr. T. J. Crandell*, testified (record, p. 149, margin 624,) that the working of the Welch mine, on

the southeast quarter of section 29, had been unprofitable. He says that the only place where he saw cinnabar, on the northeast quarter, was on "the cut," there he saw a large boulder, but the quantity of ore in the rock amounted to nothing.

J. W. Strickler, for defendant, examined that locality, and the Welsh mine. He says, (p. 158, 159 :)

I found it situated on the side of Mount Diablo—the north side—where the base of the mountain seems to rise very abruptly from the surface, and this is on the edge of the base of the mountain, some—I would guess—one hundred and fifty feet above the level of a ravine, below, or north of the Welch mine, on which reduction-works are situated, and which reduction-works are situated on the northeast quarter of section 29, the claim in question, and where, from all appearances, all of the ores that have from time to time been worked by the various companies attempting to work the Welsh Consolidated (so-called) quicksilver mine have reduced all their ores, and where they take all these ores to, from the southeast quarter, or Welsh mine, to reduce them; the furnace and reduction-works being on the so-called Powell claim, that being situated at the bottom of the ravine, in a little flat containing some two or more acres of flat land, or not flat, but with a gradual descent; thence down to the eastern line of the northeast quarter of the said section 29, the claim in question. The ravine, I believe, runs there. If I mistake not, all of the ravine passes through the Powell claim; and all of the cinnabar that is in that ravine seems to have come there from these reduction-works, or from the hillside north (south) of it, the mountain side, on which the Welsh Consolidated quicksilver mine is situated. It seems so, for having examined the northern side of the ravine, on which the bulk of the Powell claim, so called, or the claim in question, is situated, I find no evidences of cinnabar whatsoever. Across the hill, north of the Welsh Quicksilver Mining Company's reduction-works, a little east of north there is a tunnel run twenty-one paces into the hill through the rock. I saw some cinnabar. Mr. Mulligan examined that with me; we placed it—measured it. I saw some cinnabar at the mouth of that tunnel that evidently was carried there from some other point, there being no

seam visible in the tunnel, which was run by Mr. Oglesby, it is said. Of my own knowledge, I don't know who run it; but at any rate the tunnel was there, and there was no visible evidence of quicksilver in that tunnel that I could find. I saw some quicksilver boulders—rock in a ravine on the northern side of this claim, where, in 1866, I think, Widow Rogers lived, on this same quarter section, the quarter section in question; I saw some quicksilver boulders in that ravine that looked to me as though they had been packed there. They had been broken off—had been mined; and there is no hole, no place dug out on the surface from which they could have been taken visible to me. And I examined with a view of determining for myself whether or not that was a quicksilver-bearing quartz section, and I saw there those boulders. Otherwise I have seen no evidence whatever of quicksilver on that land.

Question 11. The ledge on the Welsh quicksilver mine, what kind of a ledge is it?

(OBJ.—Objected to as immaterial.)

Answer. Well, Mount Diablo seems to be a solid mass of rock. Of course here and there there is a little piece of earth. It is a kind of blue sandstone; that is, there is some sandstone in it. It seems to be a primitive rock, some portions of it. It is a conglomerate, so called, at least I have been so taught to call it—a conglomerate mass; and in this rock we find little seams of quicksilver. We found boulders at the base of this mountain, on the *southeast* quarter of section 29, immediately south of and adjoining the claim in question, and about four hundred yards, I should say, from the southern line of the claim in question we found large boulders of sandstone and conglomerate rock—a kind of blue shaly rock, interspered with quicksilver—I mean cinnabar. Some of it is quite rich in spots, and some of it is not rich. Some of looks as if it was limestone, and I think there is some limestone mixed in with it, and that seems to be the character of the rock. There is some shale—considerable shale there. What is called shale, a rock of a slaty nature.

This witness says, (p. 160,) that he examined all the holes he could find, and the tunnels on the NE. ¼ of section 29,

and found no such evidences of cinnabar as he had observed on the SE. quarter.

It is shown by the testimony of Phillips and Bendixen for defendant that all the quicksilver mining in that vicinity has been unprofitable. Three times the Welsh mine on the SE. ¼ of section 29 has started in the last twenty years, and three times it has shut down.

Not only the Welsh mine, but the cut and tunnel on the Powell claim were, at the time of taking the testimony, in an abandoned and deteriorated condition, with no prospect of recovery. The tunnel was the work of Oglesby, and not of Powell, done some years ago.

The witnesses all agree in stating that the rocky boulders containing cinnabar ore are found in the ravines or gulches, the places they would naturally find if they had, in remote ages, been separated from the mass of Mount Diablo, which overshadows this land, rising from it 3,000 feet in three miles, with a continuous ascent.

If I can understand the record, the complainant's witnesses, except G. W. Strong, testified between June 26 and July 7, 1877. (Record, pp. 12 and 114.)

The defendant's witnesses testified, beginning August 16 and ending October 9, 1877. The depositions of both parties, before that time taken, were filed in court October 9, 1877. Record, 115, margin 479; and 187, margin 788.

On page 178, margin 750, we find the date October 31, 1877, which date appears to be that of the recall of R. F. Knox and of the deposition of G. W. Strong, but whether that be true or not, it appears, from Mr. Strong's testimony, that he examined the land in contest in the latter part of August, 1877, after the testimony had been given by the other witnesses for the complainant, and after the principal witnesses for defendant, Bendixen, Mulligan, Crandell, and Strickler, had testified, August 16, 1877.

G. W. Strong testified in rebuttal for the United States,

and, on an examination, his testimony is evidently adapted, if not intended, to fill up a palpable deficiency in the evidence in the case when the complainant's evidence was first closed.

Late in August he examined the Powell claim.

He says, p. 181:

Answer. We found a place which is called the Powell mine. It is known by that name there. We found cinnabar there. We dug down in the hard rock, and put in blasts and blew it out, and found good rich rock.

Question 12. Was that upon the surface of the ground?

Answer. No, it was in a cut. It was in the cut along the south line. * * *

Question 16. How deep is that cut at the end of the cut next to the bank?

Answer. Well it is—I could not say how many feet, but it seemed to have been filled up some.

Question 17. Fifteen or twenty feet?

Answer. It possibly has been that much, but I could not say positively now. It is sloughed in; filled in along down the middle. Where I dug down and put in the blasts it was very solid, and to considerable depth. I cannot say how many feet, probably 10 or 12 feet; something that way.

Question 23. What per cent. would you judge the rock to be?

Answer. Well, I should say it was from 3 to 10; somewhere along there. Of course I could not state exactly. It seemed to be a rich deposit there.

Question 24. State whether there was any appearance of that having been a slide from the mountain.

Answer. Well, I examined as to that matter. I did not consider it to be a slide. I thought it was fixed there. It was not a slide.

Referring to the diagram X, found on p. 193, the witness says, p. 183:

Question 55. Look at this diagram marked "X." State whether that is a fair diagram of the mine as you saw it.

Answer. It is not a correct diagram of anything particularly, but it is approximating to it, I might say. His house is here (showing), and barn, as I saw it; this creek passing down between there and the county road passing down there. I know by this that I was on that ground there.

The effect of this statement is to cause us to doubt whether the witness really knew the locality of the land in controversy, and the relations of lines and objects to each other. It is certain that the diagram does not truly represent the section lines of the United States surveys.

If that map was used to show him where to go, or to help him find the land or the Powell house and the Welch mine, then he must have gone wrong.

This witness is also confronted by his own history. He has been a metallurgist and assayer twenty-one years; has handled cinnabar ores twelve years; has been living in San Francisco, only thirty miles or so distant, and he comes up to Mount Diablo in the end of August, 1877, for the first time, though, as Welch says, Record p. 40, the region had attracted attention as far back as in 1860, when it was first prospected.

Though the United States has called seventeen witnesses, some of whom have been prospecting in this region ten to fifteen years and more, and some have known it twenty years, no evidence has been given of any productive mining on this land, and the mining at the Welch mine, upon richer and larger cinnabar deposits on the southeast quarter of the section, has not been profitable.

The witnesses do not know of any profitable mining having been done on this quarter section, and are in doubt whether the more massive and richer rock found on the Welch claim has ever been, or can ever be, profitably worked.

J. Marsh (Record p. 30, Ques. 61) is not able to say that

any profitable mining has ever been done in the Mount Diablo mining district.

One William Ryder Powell is mentioned by nearly all the witnesses as being upon this land. It is called *the Powell claim*. Several witnesses say they were summoned or requested to attend by Powell, to give their testimony in behalf of complainant before the examiner.

Let us, therefore, investigate Dr. Wm. Ryder Powell, the bonanza king, that the United States shows to us, in the testimony in this case, as the man who has occupied and used this place for quicksilver mining.

Joshua Marsh, p. 14, for the United States:

Question 26. Mr. Marsh, is the land occupied or unoccupied?

Answer. Dr. Ryder Powell has been occupying it; I saw him there a good many times.

Question 27. How long has Dr. Ryder Powell occupied that land?

Answer. According to the best of my knowledge, since 1866.

Cross-examination, Record, 15:

Answer. No; there is no farming on my land; and on this of Dr. Powell's there is about five acres that he farms a little, that is, by raising hay, a little grain for hay—about five acres—four or five acres.

Question 33. How many years did you say you run your sheep on this land?

Answer. Well, between three and five years. I have been running them across on my land, and run them over there.

Question 34. How many sheep did you have?

Answer. I had from four hundred—when I got through with them I had over a thousand head. I took them on shares, most of them; I had only a few of my own.

Question 35. You raised them on this land and on other land like it in the neighborhood?

Answer. I run them across it. I kept them on this more on account of the water; there was good water there.

Pages 16 and 17:

Question 58. How many years have you known Mr. William Ryder Powell on this land?

Answer. About 1866; I knew him before that.

Question 59. I mean on this land?

Answer. 1866 he came there, to the best of my knowledge.

Question 60. What does his family consist of?

Answer. He hasn't got no family here. He makes it his home there. I don't know whether he has got any family there; that is, none that I know of. That is, I never saw no family.

Question 61. How does he make his living?

(OBJ.—Objected to as irrelevant.)

Answer. I could not say how he does. He is shearing sheep sometimes, and works sometimes for farmers at harvest. I have saw him doing both. He has sheared for me, and for others.

Question 62. Where has Mr. William Ryder Powell kept his sheep.

(OBJ.—Objected to as irrelevant.)

Answer. I don't think he has any sheep. He sheared for me and he sheared for the neighbors there.

Question 63. What use has he made of this land, if any?

Answer. He hasn't made any use of it, except to let any one run across the place there. He hasn't charged me anything. I couldn't say whether he has charged any one or not. It has been a commons; everybody has had it.

J. H. Welch, examined for complainant, (Record, pp. 35, 36.)

Question 66. Who occupies the northeast quarter?

Answer. Dr. Powell, I believe. He lives there.

Question 67. Since when did Dr. Powell occupy the land?

Answer. The first I knew of it was in 1866.

Question 69. What improvements, if any, has he now, at the present time, on the land?

(OBJ.—The same objection.)

Answer. Well, he has got a house and a barn, and a small piece fenced in with a brush fence, besides the mining improvements he has made.

Question 75. You state that Dr. Powell has occupied the

land since 1866. Do you know what work he did upon that land during the years 1866 and 1867?

Answer. I don't think he done any mining.

Question 76. The same question as to 1868 or 1869?

Answer. Well, I don't know of any. In '68 and '69 I was not there.

Question 77. Do you know of his doing any mining at all upon the land?

Answer. Yes; since 1870.

Question 78. What years do you know of his mining the land?

Answer. *I think it was* 1870 *or* '71, the first that I knew anything about it.

Question 79. What did that mining consist of?

Answer. There was some of these holes and cuts that he run; part of them then and part of them since; and some of them has been run farther now than they was then.

Mr. Welch, who is well acquainted with the history of the locality, gives us a bird's-eye view of the entire premises on cross-examination, (p. 44.)

Question 220. I mean to say on all of this quarter section that we are speaking of now, after you dig down a little distance you get clear of the dirt and come to the rock?

Answer. You would in some parts of it. The holes that I dug we didn't get through, so I could not tell. The cut was not through.

Question 221. Did you ever in any place there dig down entirely through the dirt and come to the rock?

A. O, yes, sir.

Question 222. After you dug down and came to the rock, did you find cinnabar in the rock?

Answer. I never dug down but in one place, and there was none there.

Question 223. So that all the cinnabar that you ever found was mixed with the dirt and rock?

Answer Yes, sir.

Question 224. When did you first know this mining district?

Answer. In 1862. I have been in there a few times before, when they were prospecting in it, but I was not much acquainted until 1862.

Question 225. And you have known it ever since?

Answer. Yes, sir.

Question 226. Since 1862, up to this time, have you ever known any individual or any company or companies to be successful in mining there—make any money?

Answer. I don't know whether they did or not. I did not keep their books, and of course I had no means of knowing.

Question 227. You say that Powell has a house and barn on this land?

Answer. Yes, sir.

Question 228. What did he have the barn for?

Answer. I don't know. He built it, thinking he would save some hay, I guess; sometimes he does get a ton or two.

Question 229. On the land.

Answer. Yes, sir.

Question 230. Does he do any farming?

Answer. That is all I know. He would sow a little wheat on the place to get hay. When he does it sometimes the squirrels gets it and he don't get any.

Question 231. If it were not for the squirrels then, he would get some.

Answer. Yes, sir; he would get some.

Question 232. You say he has some mining improvements. What do his mining improvements consist of?

Answer. I believe I have described them. They consist of holes, cuts, and tunnel.

John Grummett, on cross-examination, (p. 85:)

Question 57. How did you make Powell's acquaintance?

Answer. He was shearing sheep up in the mountains close by where I live. I got acquainted with him by his being at work there.

Question 67. How long since you were asked to come here and be a witness?

Answer. Well, probably within ten days or two weeks.

Question 68. Powell asked you to come, did he not.

Answer. Yes; he subpœnaed me to come.

Wm. Ryder Powell is a man who does not support a family; has lived on this land part of the time since 1866;

did no prospecting before 1870, and set up no claim to it until 1874.

He was engaged in shearing sheep, raising hay and grain, but did no mining until 1870 or 1871. He built a house and barn for his agricultural needs, and dug holes, and assumed the ownership of a "cut" and tunnel, both now in a dilapidated state. In ten years we have heard of one thimbleful and one ounce of quicksilver having been obtained from the premises.

Powell has not led the mining board at San Francisco, but, when first encountering Bramlet, a couple of years before this trial, (if I can gauge the time,) he was still sheep shearing—the business which received his attention in 1866 and earlier.

The history of Powell shows the fact, that this land is not mineral. He has lived on it ten years. His house and barn are maintained in good condition, but his holes and cut and tunnel are abandoned and deteriorating, and he seems to be as poor or poorer than when he began mining. Perhaps we may say, having found mining unprofitable, he has gone back to sheep-shearing.

I, of course, suppose that when this action began the Attorney General believed that a grievous mistake and wrong had occurred in the issuing of the railroad patent, but the evidence in the case does not show it—does not sustain an affirmative; but, on the contrary, shows *that no mistake was made about this* quarter section. It is not and was not mineral land.

One of the witnesses, Taylor, says this land is about 25 miles from Oakland, say 30 from San Francisco; one or two say that the region has been prospected for cinnabar for 12 to 15 years. Powell, a single man without family, living there 10 years, has tried mining without favorable results. Whether the cinnabar ores found would pay for reduction is a point on which the witnesses thus far agree; they say with appliances in use and heretofore used they will not.

Some think that with improved facilities and machinery they would—others that they would not.

If there is any doubt here, we may turn to the history of quicksilver mining. From the articles, "Mercury," "Almaden," "Idria," in *Ure's Dictionary*, we derive the following:

"The geological position of the mercurial ores, in all parts of the world is in the strata which commence the series of secondary formations."

The mercury is evaporated at a heat of 662 Fahrenheit. The ores are roasted in furnaces, with which are connected a series of cold-air chambers for condensing the mercurial vapors.

The sulphides (cinnabar ores) at Almaden, in Spain, and Idria in Carniola (Idria is 28 miles N. E. of Trieste,) are rich in quality, and "massive" in form. The Almaden mines have been known from 700 years before the Christian era, and have been worked almost continuously. The lode is 14 to 16 yards thick. The mines are over 1,000 feet deep. The ores reduced average 10 per cent.—some contain as high as 70 to 80 per cent. of pure cinnabar.

The ores at Idria are equally rich. This mine has been worked since 1497—over 350 years. Both appear to be inexhaustible.

Watts' Dictionary of Chemistry, p. 883, "Mercury": The most abundant ore is the sulphide, or cinnabar, from which nearly all the mercury of commerce is obtained. Its most important mines are those of Idria, in Illyria; and of Almaden, in Spain. At Almaden it is found in veins, often nearly 50 feet thick, traversing micaceous schists of the older transition period; in Illyria it is disseminated in beds of grit, bituminous schist, or compact limestone of more recent date.

Encyclopedia Britannica, vol. 5, p. 784: Cinnabar is the native sulphide of mercury. * * It generally occurs in

fibrous or amorphous masses, bedded in slate-rock and shales, and more rarely in veins in granitic or porphyritic rocks.

Murray's Hand-Book for Spain, part 1, p. 220; (Almaden): The mine is apparently inexhaustible, becoming richer in proportion as the shafts deepen. The vein of cinnabar, about 25 feet thick, traverses rocks of quartz and slate, and runs towards *Almadenejos*. * * * * * The deepest shaft is said to be 1,000 feet, and the lode improves the deeper it is worked.

Baedeker's Southern Germany and, The Austrian Empire, (1868,) p. 343; Quicksilver mines of Idria: The mines are approached nearly in the center of the ancient town of Idria (1,488 ft.), by a flight of 787 steps hewn in the limestone rock. Drops of the pure metal are everywhere visible, adhering to the ore which is excavated by means of pickaxes. It is brought to the surface from a depth of 2,500 feet. * * * The annual yield averages 125 tons.

The quicksilver mines of California have reached an importance not secondary to those of Europe. The principal mines are those of New Almaden, Gaudalupe, and New Idria, and one in the Napa valley.

Those of New Almaden and Guadalupe are in the same range of mountains, some 15 miles apart only, and are said to be similar in all respects.

The New Idria mines are in a less frequented locality, and I have not met with authentic statements in regard to them.

Harpers' Magazine for June, 1863, contains an article written in 1857, by W. V. Wells in reference to the New Almaden mine, from which the following extracts are made:

* * * * * * *

The main entrance to the mine is a tunnel, commenced in 1850, in the side of the mountain, in a line with the patio, and which has already been carried to the distance of 1800 feet, by 10 wide and 10 feet in height, to the crown of the arch. * * * * *

We followed the glimmering candles, now down a slippery inclined plane, and again struggling up the precipitous base of some vein of cinnabar, which in its erratic course seems to have shot through the solid heart of the mountain, in much the zig-zag course that a drop of quicksilver would describe in rolling about the surface of a plate. * * *

We are now more than 200 feet below the patio and 600 feet below the summit of the mountain. * * *

A little farther, and we find a plank stretched across a narrow chasm, upon which two or three swarthy broad-chested miners are standing, drilling their way into the solid rock above them, where a rich lead has just been found. * * *

The ore is the native red sulphuret of mercury, with a specific gravity varying from 6.7 to 8.2. * * * The ore averages 36 per cent. * * * In the New Almaden mine the ore occurs in amorphous masses, in pockets and irregular veins, sometimes surrounded with a black clay, but often encased in a hard sterile rock or chlorite slate, which it is generally necessary to blast to remove. * * *

About 1,500,000 pounds were exported in 1854.

The ore of the New Almaden, which, as has been observed, is solely sulphuret of mercury, the rarest known, exceeds in richness that of any other on record. Although its average is 36 per cent., specimens have been found with the incredible yield of 72 per cent of mercury. * * *

In 1812, at the works of Idria, 56,686 quintals of ore yielded 4,832 quintals of quicksilver, or about 8½ per cent. * * * The mine is apparently inexhaustible. * * *

The mines in Idria were discovered in 1497, and have been steadily worked from that time.

* * * * * * * *

The Almaden mines in La Mancha set into the Sierra Morena in much the same manner that the New Almaden does into the Santa Cruz range. The first has yielded steadily for over two thousand years without diminution, and there is no likelihood of the latter becoming exhausted.

* * * * * * * *

If I have comprehended the elementary developments of nature that make up the requisites of a true cinnabar mine, yielding valuable commercial results, *rich ores* must

be found *in large masses.* Though inferior ores are reduced at the great mines, it is because they have been necessarily extracted from the mine in order to the removal of the masses of rich and valuable ore—yielding 30 to 70 per cent. of quicksilver.

In twenty years of prospecting, there has been nothing whatever developed upon the NE. ¼ of sec. 29, Tp. 1 N., R. 1 E., indicating the existence of large masses of rich ore under the surface where the prospect holes have been sunk to the rock, hard shale has been encountered.

The uninformed men of the vicinity of Mt. Diablo, who find employment in sheep raising and wool growing, have not the experimental or theoretical knowledge which would make it plain to them that the notion of obtaining quicksilver from little chunks of cinnabar ore, found by panning the dirt and gravel of the surface earth, is chimerical. The cost of the panning process is too great for the value of its results, and if the ore that is found on the NE. ¼ of Sec. 29, were delivered at a furnace, it would, as to quality, scarcely pay the cost to accrue from reduction; and, as to quantity, would yield but a few flasks annually. Both in quality and quantity of ore, the yield could never justify the labor of obtaining mercury from panning dirt upon this land, or breaking up and reducing the few boulders found in the gulches.

I have seen lately in the newspapers, a statement that the yield of the California mines to date has been over 100,000,000 pounds of quicksilver since 1846, of which 67,000,000 have been exported.

Comparing the results obtained from known mines in California, with the results of twenty years prospecting upon the NE. ¼ of Sec. 29, Tp. 1 N., R. 1 E., we see distinctly that this quarter section is utterly worthless for cinnabar ores.

FURTHER REMARKS UNDER THE SECOND PROPOSITION,

Showing that the Tract in Controversy was never Returned by the U. S. Surveyor as Mineral Land.

The plat of the survey of this quarter section was returned by the United States Surveyor General to the office of the register of the land office at San Francisco, in whose district the land lies, on the 19th of July, 1867, as is stated by Duncan McNee, a witness for complainant, and a clerk in the United States register's office. He says, also, that the office continued to act upon that map until October 17, 1873. His evidence is so important, I quote as follows: 6.176

DUNCAN MCNEE, recalled for complainant by consent.

Mr. HEATH:

Question 1. Look at the traced map now produced, and state what it is.

Answer. It is a map of part of township 1 north, 1 east.

(The map above referred to is offered in evidence by complainant's counsel, marked Complainant's Exhibit.)

Cross-examination by Mr. WISE:

Question 1. When was the first map of the northeast quarter of section 29, township 1 north, range 1 east, first filed in the United States land office, in this city?

Answer. On the 19th day of July, 1867.

Question 2. How long did the office continue to act upon that map?

Answer. Until October 17, 1873.

Question 3. Who sent the map to the land office?

Answer. The United States surveyor general for California.

Question 4. That was the regular way of transacting business?

Answer. Of course.

Question 5. Did not the department at one time notify you that a patent had been issued before the land had been surveyed?

(OBJ.—Objected to as secondary evidence.)

Answer. I believe so.

Question 6. And did you reply to that?

(OBJ.—The same objection.)

Answer. My recollection is we did.

Question 7. Have you got those letters here?

Answer. Yes, sir; on the 14th of March, 1874—letter "N"—the Commissioner of the General Land Office decided that the northeast quarter of section 29, 1 north, 1 east, was erroneously patented to the Western Pacific Railroad Company on the 31st of May, 1870. At that time the land in question had not been surveyed; that is what they say.

Question 8. Was that a fact, that it had not been surveyed?

Answer. It was not a fact.

Question 9. What did you inform the department in answer to that?

Answer. On the 30th of March, 1874, the register and receiver replied to that letter. Their letter commenced with the usual heading—"United States Land Office, San Francisco, March 30, 1874," and was as follows:

"Hon. WILLIS DRUM'OND,
Com'r Gen'l Land Office.

"SIR: Referring to your letter 'N' of the 14th in relation to the claim of Wm. Rider Powell to the NE. ¼ of sec. 29, T. 1 N., R. 1 E., we have now to report that we have this day called upon Charles McLaughlin, Esq., land agent W. P. R. R. Co., to surrender the title to said land to the United States.

"In this connection I would state that said land was returned as surveyed by the plat filed in this office July 19th, 1867, but was not returned as mineral land until Oct. 17th, 1873.

"Very respectfully, your ob'd't serv't,
"H. J. ROLLINS, *Register.*
"CHA'S H. CHAMBERLIN,
"*Receiver.*"

Redirect examination by Mr. HEATH:

Question 1. Have the field-notes for the map of July 19, 1867, been filed in this office?

Answer. I could not say.

Question 2. Will you look at the original map of the

section in question, filed July 19, 1867, and examine the entries made upon the north half of the northeast quarter, and state what writing you see upon that map?

Answer. I see on the north half of the northwest quarter the figures "80," and on the northeast quarter the figures "160," referring to the area of the same, eighty acres and one hundred and sixty acres.

Question 3. What writing do you see upon it?

Answer. There is no writing at all on those quarters.

Question 4. On the northeast quarter of section 30 what writing do you find?

Answer. On the north half of the northeast quarter of 30 occurs the word "cinnabar," or, to put it plainer, indications of cinnabar extend east and west along the north half of the northeast quarter of 30.

Question 5. What writing is there upon sections 30, 29, 31, and 32, with reference to the character of the land?

Answer. Steep mountains, unfit for cultivation; indications of cinnabar.

This evidence is given with the office-plat before the witnesses and the examiner. In the absence of a copy of the plat of the township, this testimony agrees with the fact that the patent issued for this northeast quarter, by a proper description, after the selection thereof had been duly examined in the register's office at San Francisco, and in the General Land Office.

Mark, also, that the witness says—and this is the complainant's evidence—that the traced map marked complainant's exhibit "is a map of part of township 1 north, range 1 east." *It is that, and nothing more.* This attempt to make anything else of it, to exhibit it as *the Government survey* of the land in controversy, is a total failure, as I shall demonstrate.

That diagram is made up from the original survey of 1867, as to the north half of the northwest quarter and the northeast quarter of section twenty-nine, a survey authorized by the act of Congress of March 3d, 1853, restricting surveys of public lands to those not mineral, and as to the balance of

Question 6. And did you reply to that?

(OBJ.—The same objection.)

Answer. My recollection is we did.

Question 7. Have you got those letters here?

Answer. Yes, sir; on the 14th of March, 1874—letter "N"—the Commissioner of the General Land Office decided that the northeast quarter of section 29, 1 north, 1 east, was erroneously patented to the Western Pacific Railroad Company on the 31st of May, 1870. At that time the land in question had not been surveyed; that is what they say.

Question 8. Was that a fact, that it had not been surveyed?

Answer. It was not a fact.

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"Hon. WILLIS DRUM'OND,
Com'r Gen'l Land Office.

"SIR: Referring to your letter 'N' of the 14th in relation to the claim of Wm. Rider Powell to the NE. ¼ of sec. 29, T. 1 N., R. 1 E., we have now to report that we have this day called upon Charles McLaughlin, Esq., land agent W. P. R. R. Co., to surrender the title to said land to the United States.

"In this connection I would state that said land was returned as surveyed by the plat filed in this office July 19th, 1867, but was not returned as mineral land until Oct. 17th, 1873.

"Very respectfully, your ob'd't serv't,
"H. J. ROLLINS, *Register.*
"CHA'S H. CHAMBERLIN,
"*Receiver.*"

Redirect examination by Mr. HEATH:

Question 1. Have the field-notes for the map of July 19, 1867, been filed in this office?

Answer. I could not say.

Question 2. Will you look at the original map of the

section in question, filed July 19, 1867, and examine the entries made upon the north half of the northeast quarter, and state what writing you see upon that map?

Answer. I see on the north half of the northwest quarter the figures "80," and on the northeast quarter the figures "160," referring to the area of the same, eighty acres and one hundred and sixty acres.

Question 3. What writing do you see upon it?

Answer. There is no writing at all on those quarters.

Question 4. On the northeast quarter of section 30 what writing do you find?

Answer. On the north half of the northeast quarter of 30 occurs the word "cinnabar," or, to put it plainer, indications of cinnabar extend east and west along the north half of the northeast quarter of 30.

Question 5. What writing is there upon sections 30, 29, 31, and 32, with reference to the character of the land?

Answer. Steep mountains, unfit for cultivation; indications of cinnabar.

This evidence is given with the office-plat before the witnesses and the examiner. In the absence of a copy of the plat of the township, this testimony agrees with the fact that the patent issued for this northeast quarter, by a proper description, after the selection thereof had been duly examined in the register's office at San Francisco, and in the General Land Office.

Mark, also, that the witness says—and this is the complainant's evidence—that the traced map marked complainant's exhibit "is a map of part of township 1 north, range 1 east." *It is that, and nothing more.* This attempt to make anything else of it, to exhibit it as *the Government survey* of the land in controversy, is a total failure, as I shall demonstrate.

That diagram is made up from the original survey of 1867, as to the north half of the northwest quarter and the northeast quarter of section twenty-nine, a survey authorized by the act of Congress of March 3d, 1853, restricting surveys of public lands to those not mineral, and as to the balance of

section twenty-nine, and all of sections thirty, thirty-one, and thirty-two, it is made up from the field notes of the survey made by Partridge, in 1873, *after* the law forbidding the sub-division of the mineral lands had been repealed.

The legal result of both plats is that the northeast quarter of section twenty-nine was surveyed and returned as non-mineral land in 1867, and the southeast quarter was surveyed and returned as mineral land in 1873. The official boundary between the two descriptions of land is fixed on the line between the two quarter sections—leaving the northeast quarter unstained by any official return as mineral land.

Another Government witness besides McNee sustains my argument on this point. G. H. Welch, (at p. 39, margin 153), helped make a survey made by a surveyor, Thompson, in 1871, and says, "we had the lines run on one side of it, and they were before run on the other side. The north part of it was already surveyed."

The position I thus take is not in accordance with the certificate of H. G. Rollins, register at San Francisco, attached apparently to the diagram, but I am sustained by the field notes, and by the United States Surveyor General.

Mr. Rollins has certified that this diagram, or map, of a part of the township, as McNee properly calls it, is a "*correct copy of the original plat of township one north, range one east.*" We know that it is nothing of the kind by looking at it. Then we know that the register has no legal custody of *original plats*, and no legal authority to certify copies of them. This authority is by law given to the Surveyor General—and to him alone.

In support of this statement, I refer to sections 1, 2, and 3 of the act of March 3d, 1853, (10 Stat., 244.) Said section 3 carrying us back to the acts of 3d March, 1831, 4 Stat., 492; and section 10, act March 3d, 1803, 2 Stat., 233; and section 2, act May, 1796, 1 Stat., 464. These laws require the original plats of surveys to be kept in

books at the Surveyor General's Office; a copy to be kept open in that office for public inspection; another to be sent to the General Land Office; and a third to the local register's office. (Act 1796.)

These acts of Congress define the original plats of township surveys as those filed in the Surveyor General's Office, and he is the officer and the only officer invested by law with authority to certify to copies of the plats.

The Government offered in evidence "the field notes of "the sub-division lines of township one north, range one "east," "by John C. Partridge, commenced January 14, "completed January 15, 1873." (Record, p. 180, margin 757; found in detail, Record 187, 188, 189.

The Surveyor General, November 9, 1875, (p. 189), certifies to the copy from the approved "original field notes, as "the same remain of record and on file in this office."

The surveyor in his general description says: "The *portion of this township which I have sub-divided* is very rough and broken, and mountainous, and is more valuable for mining purposes than any other, particularly sections 29, 30 and 31," etc.

The surveyor speaks of the portion of the township he has subdivided in section 29, sections 30 and 31. His statement does not relate to any part of a section that he did not subdivide.

Now, what he had subdivided might have been less than all of each section named. *It was less than all of section* 29. The survey was one authorized by the act of July 9, 1870, and was intended to complete the survey of the township by extending the lines over the lands in the sections named that had not been surveyed in 1867, because then noted by the surveyor as "steep mountains, unfit for cultivation."

This is the truth—hard to find from these papers, yet disclosed by them on a critical examination—viz: the northeast quarter of section 29 was surveyed in 1867 and returned

as agricultural land; the southeast quarter was surveyed in 1873 and returned as mineral land.

Look at the field-notes of Partridge, and we see he did not survey a line or place a monument beyond what was needful to survey the southeast quarter of the section.

He began his survey (p. 187, margin 789) at the northwest corner of section 29, viz., "corner to sections 19, 20, 29, and 30, *already established*," thence south to the southwest corner of 29, viz., "corner to 29, 30, 31, and 32," (margin 790,) running thence east on a random line between 29 and 32, and at 80.30 he met north and south line at a point 21 links north of corner to sections 28, 29, 32, and 33." Evidently that corner had also been "heretofore established;" and from it he went north 89.51 west on a true line, and at "40.15 set stone in mound for quarter-section corner." This is the south line of section 29, and along it he reports "lands abrupt, east slope; soil third rate; no timber, (margin 791.) He continued his survey west, between sections 30 and 31, to the Mount Diablo meridian, which he found at 84.46 chains, where he set a post for corner to sections 30 and 31, (margin 792.) On the next day he surveyed the line between sections 31 and 32, (margin 792 and 793,) and when he reached the corner on the base line to sections 31 and 32, he ran north 81.10 chains to corner of sections 29, 30, 31, and 32. From the corner to sections 32 and 33, in the base line, which of course had been "established heretofore," he surveyed part of the line between sections 32 and 33; at 40.53, north of the base line, he found "the quarter section corner, between sections 32 and 33, already established," (margin 793.)

Examining critically this return of his work, we find he surveyed the line between sections 29 and 30 one mile; that between sections 29 and 32 one mile; that between sections 30 and 31 one mile; that between 31 and 32 one mile; and on the east line of section 32, from the base line, one mile.

In this survey he was along only the southern and western lines of section 29—he was not on either the north or east line of that section—and he did not survey any line or mark any corner of the NE. ¼ sec. 29. His work was merely *supplementary to prior surveys.* His "general description" cannot be regarded as official beyond the survey he made, and his return does not in any manner embrace the NE. ¼ of sec. 29, or impeach the first and legal survey thereof in 1867.

The field notes of Partridge, certified from the Surveyor General's Office, contradict the certificate of Register Rollins in this, also, that his certificate covers six sections—19, 20, 29, 30, 31, and 32—when the field notes show that Partridge surveyed only *three* sections—30, 31, and 32—and a part of a fourth, the S. ½ of sec. 29.

On the diagram (Record, 192) exhibited by the evidence of McNee there is not any mine or mineral indications noted upon the NE. ¼ of sec. 29, although the "Welch mine" is located on the SE. ¼, and with this we see that the statements of witnesses coincide.

I take the liberty to say that the course of the executive officers in regard to this quarter section is difficult to understand. Certainly nothing short of the gross incompetency in some clerk can account for the statements in complainant's Exhibit D, p. 191, margin 797, dated General Land Office, March 14, 1874, particularly the statement that the NE. ¼ of Sec. 29, 1 N., 1 E., had been patented on 31st of May, 1870, but at that time the land in question had not been surveyed.

The register and receiver had certified (Record, 178) that the said lands "are *surveyed* public lands of the United States," prior to the patent, and it is by the surveyed description there given that the patent issued in May, 1870.

The evidence of McNee and Carter, (Record 113 and 114,) was given in the absence of McLaughlin's counsel, and is very inexact and not entirely accordant with the official re-

turns, and the subsequent statement of McNee when afterwards recalled, (p. 176.) I do not deem it necessary to say more than this, that the official returns themselves supersede the testimony of clerks concerning them.

We place before this Court now confident of its recognition of the justice of our position, the title of McLaughlin, delivered from all the denunciation that has been put upon it in the bill of complaint, and by the executive officers since the patent emanated.

It is a superficial, yet not unimportant remark, that the land laws applicable to the locality of this tract, and the theory of this case alike assume that there must be a line of demarkation between "mineral land" and non-mineral land, and that this line where the two kinds of land adjoin, *must be placed somewhere.*

As the field notes of Partridge return the S. ½ of sec. 29, as mineral land, we see that in *this particular case*, the executive officers of the United States, in the matter and duty of surveying public lands according to law, and the further matter and duty of patenting land under grants from Congress, have located this line of demarkation on the southern boundary of the tract in contest—north of that line is non-mineral—south of it is mineral land by the Government surveys.

Henry Beard

108-5-10

OFFICE SUPREME COURT U. S.
FILED
MAR 29 1883
JAMES H. McKENNEY, Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1882.

No. 219.

THE WESTERN PACIFIC RAILROAD COMPANY AND CHARLES McLAUGHLIN, APPELLANTS,

vs.

THE UNITED STATES.

BRIEF FOR THE UNITED STATES.

The object of the bill in this cause is to dissipate the cloud on the title of the tract of land in the bill mentioned, resulting from the colorable right created by the improvident issuing of a patent for the said land by the United States to the Western Pacific Railroad Company.

Under the acts of Congress of 1st July, 1862, (12 Stats., p. 492, § 3,) 2d July, 1864, (13 Stats., p. 356, § 4,) and 3d March, 1865, (13 Stats., p. 504, § 2,) the Western Pacific Railroad Company, as assignee of the Central Pacific Railroad Company of California, became entitled, on the performance of certain conditions, to grants of large portions of the public lands, and actually received the same.

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Among the patents issued to the company was one for the land described in the bill, dated the 31st May, 1870.

The object of this suit is to have the said patent decreed to be null and void on the ground that the land covered by it is mineral land, it being expressly provided by the land grant act of the 1st of July, 1862, (*ubi supra*) "that *all mineral lands shall be excepted from the operation of this act.*"

The case is not embarrassed by the defence of purchaser *bona fide*, for, albeit the Western Pacific Company is no longer seised of the land, and the colorable title of the company, under the patent, has devolved upon the appellant McLaughlin, no person can possibly derive title under a patent issued in the teeth of a statutory prohibition. The claim under the patent in question can no more rise higher than the void patent than a stream can rise higher than its source. The peril of the existenee of the fact that the land is non-mineral is with the patentee and all who deraign title under him.

The simple question in the case, then, is whether the land covered by the patent is *mineral land or not*, for if it is, the patent is *necessarily void*.

To show that the *locus in quo* is mineral land, the Government introduced some seventeen witnesses whose testimony establishes to a moral certainty that the land in question is valuable only for its deposits of cinnabar or quicksilver and worthless for agricultural purposes.

To meet the case of the Government a good deal of testimony is introduced for the purpose of showing that the land in question, although mineral in character, cannot be worked with profit; and, hence, by a curious deduction finding no support in the statute, is not mineral land.

If the course of argument founded on this testimony is sound, then the prohibition of the statute must be held not

to be operative in cases where land covered by a pretended patent is rich in minerals, which, however, from one physical cause or another, cannot be made available; in short, nothing less than the interpolation of a qualification of the statutory prohibition is attempted.

All that is required to establish the invalidity of the patent is to show that the land is mineral, which we have done.

But the defence also introduce testimony to show that the land in question is not mineral land at all.

This evidence is plainly unreliable on the ground of prejudice, or imperfect observation, or predetermined purpose to support the case of the defence regardless of the facts.

The witness, Jacob Bendixen, admits his hostility to Dr. Powell, the occupier of the land, and applicant for a patent. (R., p. 138, Question 370.)

The witness, William Mulligan, whose mineralogical ability is relied on, when asked what his business is, replies: "I follow all kinds; first one thing and then another." (R., p. 140.) After saying, in answer to the 10th interrogatory, that he never saw any "sign of mineral" on the land, adds, "at the same time, *there might have been mineral there. I have been over the surface.*"

But the witness, who is introduced with the most flourish by the defence, is one J. W. Strickler, a conceited pragmatical man, who had been in the service of the Western Pacific Company, (R., p. 164,) and who was then in the employment of the defendant, McLaughlin. (R., pp. 170–1.) Admitting his connection with a claimant of the land who claimed that it was *non-mineral in production*, he says he ex-

amined it with a view of determining for himself as a miner. (R., p. 158.)

The evasiveness and disingenuousness with which he admits his connection with the defendant, McLaughlin, is noticeable, (p. 160; Int. 17.)

But his barefaced attempt to prove that the land in question is fitted for horticultural and agricultural purposes, shows him to be unworthy of credit. (R., p. 161.) Attention is also called to his answer to question 35, as showing his *animus*.

His utter want of knowledge or experience touching quicksilver mining is manifest. (R., p. 164, Int. 68–72, and Int. 79.) His willingness to give a positive opinion without any basis but common report, is another discrediting feature of his deposition. (R., p. 166, Int. 95.)

It is noticeable that, although he says he visited the land in question with Mr. Wren, who had been the manager of the Almaden quicksilver mines for eleven years, Wren is not produced as a witness, nor is the witness Strickler asked as to his whereabouts! If the defence be an honest one, it is unaccountable that Mr. Wren was not examined or his non-production accounted for.

It is amusing to read his answer, in reply to the question whether he was requested to report the land mineral or non-mineral, namely, "Certainly not. * * * My idea was this: *that if I pronounced it mineral land, that he would have no contest with the claimant—no further contest. If I pronounced it non-mineral, he would contest the claimant's claim.*" (R., p. 171, Int. 172.)

Against the cloud of witnesses produced by the Government to show that the land is mineral, we have only four

witnesses on the part of the defence whose testimony is mostly *negative*. These witnesses are ignorant and non-observant, and some of them *hostile*. It is such testimony that is relied on to overbear the evidence of G. W. Strong, the metallurgist and assayer, W. L. Strong, the assayer, of Archibal Stuart, Richard Taylor, and Joshua Marsh, to say nothing of the other witnesses of the complainant.

In the Government map of 10th October, 1873, the land in question is described as mineral, (R., p. 192,) as also in the field notes of the surveyor who made the Government survey of 1873. (R., p. 189.)

It was upon this evidence that the learned circuit judge, who has a large experience in mining controversies, decreed that the patent was null and void.

It is proper to notice the point made by the appellants, that the record does not show that the Attorney General of the United States gave his official sanction to the filing of this bill.

It does not appear by the record that any such sanction has been given; but that it was given, nevertheless, satisfactorily appears by the following letter from the Attorney General at the time the bill was filed:

DEPARTMENT OF JUSTICE,
WASHINGTON, *January* 17, 1877.

JOHN M. COGHLAN, *U. S. Attorney, San Francisco, California.*

SIR: I enclose a copy of a letter of the 16th instant, addressed to me by the Secretary of the Interior, and the enclosures therewith, to wit: a copy of a report to the Secretary by the Commissioner of the General Land Office, and a copy of a letter of March 14, 1874, addressed by the then Commissioner to the register and receiver at San Francisco.

As requested by the Secretary, you will cause legal pro-

ceedings to be instituted to vacate the patent to the Western Pacific Railroad Company of California for the N. E. one-fourth of section 29, T. 1 N., R. 1 E., Mount Diablo meridian.

Very respectfully,
(Signed) ALPHONSO TAFT,
Attorney General.

It is conceived that this is entirely sufficient to gratify the requirement of the case of United States *vs.* Throckmorton (98 U. S., p. 70) in this behalf.

It is respectfully submitted that the decree must be affirmed.

WM. A. MAURY,
Assistant Attorney General.